

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES (AFSCME)  
COUNCIL 25 AND ITS AFFILIATED LOCAL 345,  
Labor Organization - Respondent,

Case No. CU06 J-045

-and-

WANDA HOLLAND,  
An Individual Charging Party.

APPEARANCES:

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

Wanda Holland, *In Propria Persona*

**DECISION AND ORDER**

On February 26, 2007, 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

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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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In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES (AFSCME)  
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Respondent-Labor Organization,

Case No. CU06 J-045

-and-

WANDA HOLLAND,  
An Individual Charging Party.

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**APPEARANCES:**

Ben K. Frimpong, for the Labor Organization

Wanda Holland, appearing personally as Charging Party

**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 case was heard at Detroit, Michigan on January 17, 2007, before Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, including the pleadings, transcript and closing arguments of the parties, I make the following findings of fact, conclusions of law, and recommended order.

**The Unfair Labor Practice Charge and Findings of Fact:**

Wanda Holland (Charging Party) filed a charge on October 16, 2006 asserting that her union, AFSCME Local 345, had improperly blocked her from appointment to desirable extra work assignments in retaliation for her having earlier filed a grievance contesting the assignment of work. The Union filed an answer to the charge on January 12, 2007, denying that it had control over the assignment of work and denying that it had in anyway retaliated against Charging Party.

Charging Party is employed as a part-time bus attendant with the Detroit Public Schools, and is represented by Local 345. During the 2005-2006 school year, the Union negotiated a

special supplemental agreement with the Employer that allowed the part-time bus attendants to supplement their income by working in the school buildings performing cleaning activities on a daily basis as needed. The agreement provided that bus attendants who volunteered for such cleaning activities would be paid at the contractual custodian rate while performing those duties. This agreement provided a significant benefit to the members of Local 345 by increasing their employment opportunities.

During the 2005-2006 school year, work was generally available after school for bus attendants who wanted to supplement their income by working as custodians. Each day, upon arrival for work, bus attendants would let the scheduler, Marsha Jackson, know if they would be interested in working as custodians after their bus routes were over that day. Jackson is classified as a bus attendant and is a member of Local 345, but was assigned by management to dole out work assignments. Each day, Jackson would receive a call from management letting her know how many custodial slots were available. She would then assign bus attendants to work as custodians based on who signed up that day, and on the number of custodial slots available. Work was assigned on a first-come first-served basis, and was not assigned by seniority. There was little if any controversy over the assignment of work, as there were generally more custodial slots open than there were volunteers to work. From January through June of 2006, Holland participated in this pilot program and worked in the custodian capacity on approximately 78 separate occasions.

School bus attendant positions were normally assigned on a long-term basis by seniority, with individuals bidding for particular routes. Prior to the beginning of the 2006-2007 school year, Holland bid on and was awarded a particular route. At the beginning of the 2006-2007 school year, students were not attending classes because of a labor dispute between the teachers and the schools, and, therefore, there was little work available for bus attendants. A special education bus run was operating to a Garden City school, apparently under contract with the Detroit Public Schools. Holland believed that she should have been assigned to this work, as it was her regular route. Another employee was assigned instead. On September 14, 2006, Holland contacted her Local 345 steward, Margaret Wagner, to complain. Holland asserted that the Local Union vice president, Tim Johnson, had arranged the assignment improperly. Wagner promptly investigated and advised Holland that the assignment had in fact been done properly. The Union contract provided that in the event of layoffs, which had occurred because of the labor dispute, bus attendants would be recalled by school district seniority and would be temporarily assigned to the limited work available, rather than assigned according to the earlier individual route bids.

During the first week of October 2006, classes began being held and the bus attendants were recalled to work. On October 4, custodial work was only available in two schools. By October 5, work was available in about a dozen schools, and by October 6, custodial work was widely available. On October 5, Holland complained to Jackson, expressing the belief that Jackson was withholding available work.

On Friday, October 6, Holland was assigned by Jackson to the Ronald Brown School to do custodial work after her bus route. Holland failed to call in as instructed upon reporting to work at Ronald Brown School and was initially listed by Jackson as not reporting for work.

When Holland asserted to Jackson that she did not call because she had lost Jackson's number, but had in fact worked, Jackson secured approval for Holland to be paid for the Friday shift.

On Monday October 9, Holland reported for work at Ronald Brown School even though she had not that morning signed up for custodial work, or been specifically assigned to that location that day by Jackson. Two other employees had been assigned by Jackson to work at Ronald Brown School that Monday. When she discovered that Holland had reported for work without signing up or being assigned, Jackson secured approval for all three employees to be paid, even though that resulted in overstaffing Ronald Brown School on October 9. Holland believed it was improper for Jackson to have assigned other employees, and that she should have been assigned to work as a custodian after hours at the Ronald Brown School on essentially a permanent basis, at least for so long as work was available. Based on this one disputed assignment, Holland concluded that Jackson, who she perceived as acting on behalf of Tim Johnson, was deliberately disadvantaging her. Holland believed that Johnson resented her for having earlier challenged the assignment of bus attendant work in mid-September.

Holland believed that Jackson, when assigning after-hours custodial work, essentially worked as Johnson's assistant and, therefore, that Johnson was ultimately responsible for decisions implemented by Jackson. There was however no evidence that Johnson had any role in the assignment of daily work, other than in his capacity of union official seeing to it that the assignments did not violate the collective bargaining agreement or the special agreement regarding after-hours custodial work. Jackson does not hold, and has never held, office in the Union.<sup>1</sup>

Based upon her suspicion that she was being improperly deprived of available work to which she felt entitled, Holland stopped volunteering for the after-hours custodial work after October 10, 2006. No further work was assigned to Holland after she stopped volunteering on a daily basis. Other employees who went through the daily process of checking in with Jackson to let her know they were available continued to be assigned after-hours work until the end of October 2006, when the pilot program came to an end and no further assignments were made.

While Holland had her suspicions regarding the motivation of Jackson and of Johnson, there was no overt act or comment by either individual expressing any hostility toward Holland as a result of her September grievance regarding the assignment of bus attendant work.

#### Discussion and Conclusions of Law:

Charging Party Holland asserts that the Respondent Union retaliated against her, and in essence that the Union used its alleged control over the assignment of work to cause the Employer to retaliate against her, based on animosity arising from her protected activity under PERA.

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<sup>1</sup> This factual finding is of significance as Holland's suspicions were not without some historical basis. Local 345 had previously been found to have violated Section 10(3)(b) of PERA by compelling this Employer to preferentially assign minor union officials to the informally titled position of 'bus attendant coordinator', which previously handled the scheduling of work for bus attendants, and which is now performed by Jackson. *AFSCME Local 345, 1993 MERC Lab Op 743.*

Establishing a violation of PERA requires more than mere suspicion. *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 126 (1974). Here, there is nothing in the record to support Holland's suspicion that the filing of the September grievance by Holland over the disputed bus run resulted in hostility toward her. I find that the Union officials involved responded timely, cordially, and without hostility to Holland's ultimately mistaken belief that the mid-September bus run had been improperly assigned.

Holland likewise failed to establish that she was retaliated against as a result of her filing the September grievance. No adverse action was taken against her. Holland was assigned after-hours work when it was available and when she signed up for it. After October 10<sup>th</sup>, Holland never signed up for after-hours work. It is undisputed that she was told, as were all employees, that the only way work would be assigned was if the employee signed up daily as willing and able to accept an assignment. It is undisputed that ample work was available and that Holland would have been assigned such work if she had signed up for the work. She chose not to follow the uniformly enforced procedure. That is the only reason she was not assigned work. There was no adverse action taken against Holland by Jackson, by Johnson, or by the Union.

It was not established that there was any hostility toward Holland as a result of her engaging in protected activity. It was not established that any adverse action was taken against her. Accordingly, I recommend that the Commission issue the order set forth below.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor  
Administrative Law Judge

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