

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

In the Matter of:

OAKLAND COUNTY DEPUTY SHERIFF'S ASSOCIATION,
Labor Organization-Respondent,

Case No. CU07 D-020

-and-

MARK MACKIE,
An Individual-Charging Party.

APPEARANCES:

Mark Mackie, *In Propria Persona*

DECISION AND ORDER

On June 27, 2007, Administrative Law Judge David M. Peltz 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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An Individual Charging Party.

APPEARANCES:

Mark Mackie *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 to David M. Peltz, Administrative Law Judge for the Michigan Employment Relations Commission. This matter comes before the Commission on an unfair labor practice charge filed by Mark Mackie against the Oakland County Deputy Sheriff's Association on April 23, 2007. The charge alleges that the Union violated its duty of fair representation by "misinterpreting" contract language pertaining to bumping rights and location preference. According to the charge, the Union's executive board "changed bump procedures through written correspondence with the employer which in turn displaced complainant Mackie from maintaining his shift preference" for which he holds seniority.

In an order issued on May 24, 2007, Mackie was granted fourteen days in which to show cause why the charge 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 that order.

Discussion and Conclusions of Law:

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. *Vaca v Sipes*, 386 US 171 (1967); *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); *International Alliance of Theatrical Stage Employees, Local*

274, 1001 MERC Lab Op 1. 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; *Wayne County DPW*, 1994 MERC Lab Op 855.

In the instant case, the charge does not assert that Respondent acted arbitrarily, discriminatorily or in bad faith with respect to its representation of Mackie. Rather, it appears that Charging Party is merely dissatisfied with the Union's interpretation of the collective bargaining agreement, an interpretation which the Employer apparently does not contest. The Commission addressed a similar claim in *Saginaw Valley State University*, 19 MPER 36 (2006). In that case, an individual employee disagreed with the manner in which the employer and union were interpreting a term in the collective bargaining agreement. In dismissing the employee's charge, the Commission noted that where there is no dispute between the union and the employer as to the interpretation of the contract, that construction governs. *City of Detroit*, 17 MPER 47 (2004); *Detroit, Wastewater Treatment Plant*, 1993 MERC Lab Op 716; *Muskegon County*, 1992 MERC Lab Op 356.

Despite having been given an opportunity to do so, Charging Party has alleged no facts from which it could be concluded that Respondent acted arbitrarily, discriminatorily or in bad faith with respect to its representation of him. Pursuant to Rule 165, R 423.165 of the General Rules and Regulations of the Employment Relations Commission, dismissal of the charge is appropriate.

RECOMMENDED ORDER

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge

Dated: _____