

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

In the Matter of:

DETROIT FEDERATION OF TEACHERS,
Labor Organization-Respondent,

Case No. CU07 B-006

-and-

CLAIRESS JACKSON,
An Individual-Charging Party.

APPEARANCES:

Sachs Waldman, by Eileen Nowikowski, Esq., for Respondent Labor Organization
Clairess Jackson, *In Propria Persona*

DECISION AND ORDER

On March 30, 2007, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order in this matter finding that Charging Party Clairess Jackson offered no factual basis for her charge filed pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended. The ALJ recommended dismissal of the Charge for failure to state a claim upon which relief can be granted. His Decision and Recommended Order was served on the interested parties in accordance with Section 16 of the Act. On April 23, 2007, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order. In her exceptions, Charging Party alleges that the ALJ erred by failing to find that the Union did not represent her. We have reviewed Charging Party's exceptions and find them to be without merit.

Charging Party worked for the Detroit Board of Education. Her Charge filed against Charging Party's bargaining representative, the Detroit Federation of Teachers (DFT) on February 13, 2007, alleges "Failure to represent" In her attachment to the Charge, she asserts that on some unspecified date "[d]uring the summer" she was subject to a tenure hearing/meeting and that DFT Representative Keith Johnson was very disruptive to the overall proceedings. She asserts further that Johnson's behavior caused a negative effect and/or outcome on her case, that he was seeking to prevent her case from proceeding to "arbitrary" [sic]¹, and asked for another person from the union to represent her at "arbitrary" [sic]. The ALJ determined that the charge set forth conclusory allegations, failed to provide the minimum information required by Rule 151 of the General Rules of the Michigan Employment Relations Commission, 2002 AACCS,

¹ We can only assume that Charging Party is referring to "arbitration."

R 423.151 and was subject to dismissal for failure to state a claim. He, therefore, issued an Order to Show Cause, providing Charging Party with an opportunity to establish a basis for proceeding with her case. In that Order, several items were to be answered by Charging Party, including: when did she last work for the Detroit Public Schools, on what date did the Union first and most recently act, or fail to act violating its duty toward her, and what action did the Union take, or fail to take that violated its duty. Charging Party did not respond to the Order and did not provide further information. The Respondent Union moved for dismissal, and the ALJ recommended that the Charge be dismissed.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under Rule 165, 2002 AACCS, R 423.165. We agree with the ALJ that the Charge does not state a claim upon which relief can be granted under PERA. Charging Party sets forth no dates in her Charge to indicate when she worked for the Detroit Board of Education, nor does she indicate the dates on which the Union allegedly violated its duty of representation toward her. While the Charge alleges actions by Respondent that may have been motivated by animus or bad faith, the Charge does not indicate when those actions occurred. It is not possible to determine from the Charge when the actions complained of occurred relative to Charging Party's termination from employment or relative to the filing of the charge.

By issuing the Order to Show Cause, the ALJ gave Charging Party an additional opportunity to allege sufficient facts to support her claim. However, Charging Party did not take advantage of that opportunity within the allotted time. Thus far, Charging Party has not provided an explanation for failing to do so. The failure of a charging party to respond to an order to show cause may, in itself, warrant dismissal of the charge.

In her exceptions, Charging Party responds to the questions in the Order to Show Cause. However, her belated response does not cure the defects in the Charge. Rather, it supports our conclusion that the Charge is untimely. While Charging Party states in one copy of her charge that she was terminated in October 2006, the charge appears to refer to the Union's failure to represent her in October 2005. In her exceptions, Charging Party answers the ALJ's inquiries as follows:

A. Question: When did Jackson last work for the Detroit Public Schools?

Answer: "*November 2004*"

B. Question: When did Jackson last request that the Union take particular action on her behalf?

Answer: "*4-11-07*"

C. Question: What action did the Union take or fail to take, that Jackson claims violated the Union's duty?

Answer: "*Fail to grieve termination*"

D. Question: On what date did the Union first act, or fail to act, in a way that Jackson claims violated its duty towards her?

Answer: "Octob2005 (*Fail to grieve termination*) [sic]"

Given the absence of relevant dates in the Charge and the conflicting information submitted with the exceptions, we are unable to conclude that the Charge was filed within the six-month statute of limitations set forth in PERA. The limitations period is jurisdictional and cannot be waived. *Walkerville Rural Communities Sch*, 1994 MERC Lab Op 582-583. We, therefore, conclude that the Charge filed in February 2007 is barred by the six-month statute of limitations set forth in Section 16(a) of PERA, and we adopt the recommendation of the Administrative Law Judge.

ORDER

The unfair labor practice is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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APPEARANCES:

Clairess Jackson, for the Charging Party
Eileen Nowikowski, for Respondent Detroit Federation of Teachers

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE**

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 to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Findings of Fact:

The charge in this matter alleged in conclusory terms that the Union failed to properly represent Charging Party Clairess Jackson regarding her termination from employment with the Detroit Public Schools. The charge failed to provide the minimum information required by Commission Rule R423.151 and was therefore subject to dismissal for failure to state a claim. Charging Party was given an opportunity through an order to show cause to establish that there was a basis for proceeding with her claims. The order placed Jackson on notice that to avoid dismissal she must provide the following information:

- a. When did Jackson last work for the Detroit Public Schools;
- b. When did Jackson last request that the Union take particular action on her behalf;
- c. What action did the Union take, or fail to take, that Jackson claims violated the Union's duty;
- d. On what date did the Union first act, or fail to act, in a way that Jackson claims violated its duty toward her;

- e. On what date did the Union most recently act, or fail to act, in a way that Jackson claims violated its duty toward her;
- f. Has Jackson filed claims against her Union or against her former Employer with any other administrative agency? If yes, please provide copies of those charges and documentation of the resolution of those charges.

Despite being given twenty-one days in which to do so, Jackson failed to respond to the order. The Respondent has moved for dismissal

Discussion and Conclusions of Law:

Where a charge is deficient on its face, the failure of a Charging Party to respond to an order to show cause in itself warrants dismissal of the charge. Allegations in a complaint for a breach of the Union's duty of fair representation must contain a factual explanation of what the Union did, or failed to do, 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. To pursue a charge against a union, a charging party must allege and be prepared to prove that the union's conduct was arbitrary, discriminatory or done in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). The fact that a member is dissatisfied with their union's efforts or 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. Despite being given an opportunity to do so, Charging Party has offered no factual basis for her charge and, pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, dismissal for failure to state a claim upon which relief can be granted is appropriate.

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: _____