

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

In the Matter of:

DETROIT FEDERATION OF TEACHERS,  
Labor Organization - Respondent,

Case No. CU07 H-047

-and-

BESSIE Y. STEWARD,  
An Individual - Charging Party.

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APPEARANCES:

Sachs Waldman, PC, by Andrew Nickelhoff, for Respondent Labor Organization

Bessie Y. Steward, Charging Party, *In Propria Persona*

**DECISION AND ORDER**

On December 28, 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: \_\_\_\_\_

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

In the Matter of:

DETROIT FEDERATION OF TEACHERS,  
Respondent-Labor Organization,

Case No. CU07 H-047

-and-

BESSIE Y. STEWARD,  
Individual Charging Party.

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**APPEARANCES:**

Bessie Y. Steward, for Charging Party, appearing personally

Sachs Waldman, PC, by Andrew Nickelhoff, for Respondent Labor Organization

**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE 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 Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission.

On August 31, 2007, a charge was filed in this matter asserting that the Detroit Federation of Teachers (Union) has violated the Act by failing to properly represent Bessie Y. Steward (Charging Party) on a grievance related to the employer's decision to lay her off from her position and then later rehire her at a lower rate of pay or classification. The attachments to the Charge indicate that the layoff occurred in August of 2004, with the return to work occurring in September, 2004.<sup>1</sup> On October 22, 2007 the Union filed a motion to dismiss and served a copy on Steward. By letter of October 24, 2007, the undersigned granted Steward twenty-one days to respond to the Union's motion, cautioning her that a failure to respond would result in a decision without her response. Charging Party did not respond to the Union's motion to dismiss.

**The Charge and Findings of Fact:**

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<sup>1</sup> A recommended order of dismissal for failure to state a claim was issued on September 26, 2007, regarding Steward's related charge against the employer, *Detroit Public Schools*, Case No. C07 H-202.

The basis of the Charge is that Steward was laid off and then rehired under a different classification at a lower rate of pay. Steward asserts that the Union failed to adequately pursue claims which she believes could have resolved the dispute in her favor. In particular, Steward alleged that the Union failed to list her by name on a particular grievance. Steward does not assert any other facts that would support a conclusion that the Union acted in an arbitrary, bad faith, or discriminatory fashion.

The Union's motion to dismiss asserts, without any contradiction by Steward, that the Union vigorously pursued a class action grievance on behalf of the estimated 1,000 teachers affected by the 2004 layoffs in question. The Union asserts that it took the matter to arbitration, resulting in an award by Arbitrator Alan Walt issued in October, 2005. Further, the Union pursued litigation in the Circuit Court seeking relief enforcing the arbitration award, and returned to the Arbitrator, resulting in a second award by Walt in March of 2007. The Union further asserts that based on Steward's licensing status at the relevant times, as reflected by State of Michigan records which were attached to the motion, there was no contractual violation by the employer as to Steward.

#### Discussion and Conclusions of Law:

To pursue a charge against a union for breach of its duty of fair representation, 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 is insufficient to constitute a proper charge of 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.

Here, Steward alleges that the Union failed to specifically list her by name on a particular class action grievance. However, even accepting that allegation as true, it describes no more than mere negligence, and conduct by a Union which is merely negligent does not violate the legal duty of fair representation. *Goolsby, supra.*; *Whitten v Anchor Motor Freight*, 521 F2d 1335 (CA 6, 1975), *cert den* 425 US 981 (1976). The Union credibly, and without contradiction, indicated that it brought a class action grievance because, with over 1,000 affected employees, it would have been impractical to list each individual. 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 (1973). The Union's tactical choice to bring the claim as a class action was opposed by the employer, but was ruled proper by the arbitrator. A reasonable good faith tactical choice by a Union is not a breach of the duty of fair representation.

Additionally, a charging party must allege and be prepared to prove not only a breach of the duty of fair representation by the Union, but also allege and prove 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). The State of Michigan Department of Education records establish that Steward's licensing status was such that the treatment she received from the employer was not a violation of the

collective bargaining agreement. Without a contract violation, there cannot be a violation by the Union of its duty to represent employees.

Taking each factual allegation in the charge in the light most favorable to Charging Party, the allegations do not state a claim against the Union under the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge is therefore subject to summary dismissal.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor  
Administrative Law Judge

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