

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

In the Matter of:

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 517M,
Labor Organization - Respondent,

Case No. CU08 D-020

-and-

TAMMY WILLIAMS,
Individual Charging Party.

APPEARANCES:

Tammy Williams, *In Propria Persona*

DECISION AND ORDER

On June 02, 2008, 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 517M,
Respondent-Labor Organization,

-and-

Case No. CU08 D-020

TAMMY WILLIAMS,
Individual Charging Party.

APPEARANCES:

Tammy Williams, Charging Party appearing personally

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON SUMMARY JUDGMENT**

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) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of 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:

On April 22, 2008, a Charge was filed in this matter by Tammy Williams asserting that Service Employees International Union, Local 517M (the Union) had violated the Act, on an unspecified date, by refusing to file a grievance protesting the termination of Charging Party from her employment. Such an allegation failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.165(2)(d), the Charging Party was ordered to provide a more definite statement of the Charge against the Union. A timely response was filed.

Williams' response to the order for more definite statement establishes that she was terminated from her employment after she was incarcerated and unable to report for work from August 16, 2007, through at least November 15, 2007. She does not allege in either the original charge or in the more definite statement of her charge that the Employer's decision to terminate her employment was a violation of the collective bargaining agreement.

Additionally, in the order for more definite statement, Williams was specifically directed to provide a factual description of the conduct by the Union that is alleged to violate the Act, including an explanation of why Williams believes it was improper for the Union to refuse to pursue a grievance over her termination. Williams did not address this issue in her response, and has provided no explanation of why she asserts that it was improper for the Union to decide not to pursue a grievance over her termination while she was incarcerated and unable to report for work.

Discussion and Conclusions of Law:

The charge in this matter suggests that the Union breached its statutory duty of fair representation. 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 charging party 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 proven, 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. There is no allegation that the employer violated the collective bargaining agreement. The crux of this dispute is Williams' allegation that the Union decided against pursuing a grievance over the fact that she was terminated from employment as a result of being incarcerated and unable to report for work for at least three months.

The fact Williams is dissatisfied with her Union's efforts or ultimate decision is insufficient to establish a breach of the 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. A union's ultimate duty is toward the membership as a whole, rather than solely to any individual and therefore a union has the legal discretion to decide to pursue, or not pursue, particular grievances based on the general good of the membership, even though that decision may conflict with the desires and interests of certain employees. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973); *Lansing Sch Dist*, 1989 MERC Lab OP 210, 218, *aff'd* Mich App No. 116345 (March 26, 1991), *lv app den* 439 Mich 955 (1992).

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. The Commission has “steadfastly refused to interject itself in judgment” over grievance decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint*, 1996 MERC Lab OP 1, 11. Here, based on Charging Party’s own explanation of the reason for her discharge, and her failure to assert a contract violation by the Employer, it is impossible to infer that a decision by the Union to not pursue a grievance was irrational.

The conclusory allegations in the charge in this matter, even if proved, do not state a claim of a breach of the Union’s duty of fair representation, and are, therefore, subject to dismissal, under R 423.165 (2)(d), for failure to state a claim upon which relief could be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O’Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____