

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

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization - Respondent,

Case No. CU08 F-034

-and-

WAYNE D. BERNARD,
An Individual - Charging Party.

APPEARANCES:

Rudell & O'Neill, P.C., by Wayne Rudell, Esq., for Respondent Labor Organization

Wayne D. Bernard, *In Propria Persona*

DECISION AND ORDER

On August 5, 2008, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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:

TEAMSTERS LOCAL 214,
Respondent-Labor Organization,

-and-

Case No. CU08 F-034

WAYNE D. BERNARD,
Charging Party.

APPEARANCES:

Wayne D. Bernard, Charging Party appearing personally

Wayne Rudell, for Respondent Labor Organization

**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 (MERC). This matter is being decided pursuant to an order to show cause why the charge should not be dismissed for failure to state a claim.

The Unfair Labor Practice Charge:

On June 27, 2008, a Charge was filed in this matter by Wayne D. Bernard (the Charging Party) asserting that Teamsters Local 214 (the Union) had violated the Act, in some unspecified way, on unspecified dates, but seemingly arising from a November 2007 grievance settlement. These allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.151(5), R 423.165 (2), and R 423.182, on July 11, 2008, the Charging Party was ordered to provide a more definite statement of the Charge against the Union and to show cause why the charge should not be dismissed as barred by the statute of limitations. Charging Party was further directed to provide a clear and complete statement of facts, including the date of occurrence of each act complained of, the names of those agents of the Union who committed the charged acts, and the section(s) of PERA allegedly violated, as well as a concise and specific description of the remedy requested for each claimed violation of the Act.

On July 30, 2008, Charging Party Bernard filed a timely response of thirty-nine pages, inclusive of exhibits.¹ In his response to the order, Bernard did not comply with the directive that he explain what relief he was seeking, nor did he address the statute of limitations issue regarding his original charge. Instead, Bernard raised a new litany of what can best be described as claimed contractual violations that have arisen since the filing of his original charge. The several issues underlying the dispute appear to be Bernard's dissatisfaction with a grievance settlement in which he received partial payment of a claim, and his claim that he should more properly be in a different bargaining unit. Additionally, Bernard asserts a violation of the Michigan Whistleblower Protection Act, an allegation over which the Commission lacks jurisdiction.

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 attachments to the Charge, and Bernard's recent filings, make it apparent that Bernard is dissatisfied with his Union's acceptance of what he perceives to be inadequate relief for a particular grievance. As reflected in the documents provided by Bernard, the dispute involved competing claims by Bernard that he had been improperly sent home from work early and the Employer's claim that Bernard had been insubordinate in abandoning his work. The Union secured payment for Bernard for one-half of the disputed day, and explained to Bernard the Union's belief that the settlement was fair, particularly where the Union had concluded that an arbitrator could in fact have upheld severe discipline of Bernard for his conduct that day.

Bernard has not alleged any facts that would support a claim that the Union acted out of animus towards him or that it failed to investigate or take seriously his claims. Rather, it appears Bernard is dissatisfied with the favorable, if partial, outcome achieved by his Union.

¹ On July 31, 2008, Bernard filed a similar document of forty pages, in which Bernard asserts violations of particular articles of the collective bargaining agreement.

The fact that Bernard is dissatisfied with his Union's efforts or ultimate decision is insufficient to state a claim for 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. A union has, and must exercise, 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. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973).

A union's decision to settle, or even to withdraw, a grievance over an individual member's objection 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 the filings by Bernard, it is impossible to infer that a decision by the Union to settle the grievance was irrational.

The conclusory allegations in the charge in this matter, even if true, 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.

Under PERA, there is a strict six-month statute of limitations for the filing and service of charges, and a charge alleging an unfair labor practice occurring more than six months prior to the filing and service of the charge is untimely. The six-month statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. By failing to address the statute of limitations issue in his responses to the order to show cause, Bernard has declined the opportunity to explain how his claims were not barred the statute of limitations, and his claims are, therefore, subject to dismissal, under R 423.165 (2)(c), 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: _____