

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

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Public Employer-Respondent,

Case Nos. C08 K-237 &CU08 K-058

-and-

TEAMSTERS LOCAL 214,
Labor Organization-Respondent,

-and-

BERNICE AIKEN,
Individual-Charging Party.

APPEARANCES:

Bernice Aiken, *In Propria Persona*

DECISION AND ORDER

On December 30, 2008, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were 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

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-and-

TEAMSTERS LOCAL 214,
Labor Organization-Respondent,

-and-

BERNICE AIKEN,
An Individual Charging Party.

_____ /

APPEARANCES:

Bernice Aiken, Charging Party, appearing on her own behalf

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 for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), on behalf of the Michigan Employment Relations Commission.

The Unfair Labor Practice Charges:

On November 10, 2008, two related and identical charges were filed in this matter. The Charge in Case No. CU08 K-058 asserts that Respondent Teamsters 214 (the Union), acting through a Union steward, advised Bernice Aiken (the Charging Party) that her concerns regarding the handling of a layoff were not a valid grievance. The second charge, filed against Respondent Detroit Public Schools (the Employer) in Case No. C08 K-237 alleged that the Employer laid off Aiken in violation of the collective bargaining agreement. Pursuant to R 423.165(2)(d), the Charging Party was ordered to explain in writing why the two charges should not be dismissed for failure to state claims upon which relief can be granted. Charging Party did not respond to the order.

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 R423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008).

The Charge Against the Employer

The Charge in this matter alleges only that the Employer violated the Union contract regarding layoff and seniority. Even if such a contractual violation were established, PERA does not prohibit all types of discrimination or unfair treatment, nor is the Commission charged with interpreting the collective bargaining agreement to determine whether its provisions were followed. Absent a factually supported allegation that the Employer was motivated by union or other activity protected by Section 9 of PERA, the Commission is prohibited from making a judgment on the merits or fairness of the actions complained of by Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation in the Charge suggesting that the Employer was motivated by Charging Party's involvement in union or other activity protected by PERA, and because no response was filed to the order to show cause, the charge against the Employer must be dismissed as it fails to state a claim upon which relief can be granted.

The Charge Against the Union

The charge alleges only that the Union steward advised Aiken that the steward did not believe Aiken had a valid claim under the contract. Because Unions generally have the discretionary authority to decide whether or not a particular case should be pursued, this allegation does not state a claim under PERA.

The fact that a member expresses dissatisfaction with their union's efforts or ultimate decision 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. A union has considerable discretion to decide how, and even whether or not, to pursue and present particular grievances. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146 (1973). A union's decision on how to proceed in a grievance case is not unlawful 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. Because there is no factual allegation in the Charge supporting the claim that the Union violated its statutory duties, and because no response was filed to the order to show cause, the charge against the Union must be dismissed as it fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

The unfair labor practice charges are dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: _____