

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY, AND
MUNICIPAL EMPLOYEES (AFSCME), COUNCIL 25,
Labor Organization-Respondent,

Case No. CU08 F-028

-and-

WALTER SHEPARD,
An Individual-Charging Party.

APPEARANCES:

Cassandra D. Harmon-Higgins, Esq., for the Labor Organization

Walter Shepard, *In Propria Persona*

DECISION AND ORDER

On August 5, 2008, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Judgment in the above matter finding that the unfair labor practice charge filed against Respondent, American Federation of State, County, and Municipal Employees, Council 25 (AFSCME), should be dismissed for failure to state a claim upon which relief can be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. The ALJ held that Charging Party, Walter Shepard, failed to allege facts that Respondent violated its duty of fair representation by not pursuing Charging Party's termination grievance to arbitration. Also, Charging Party failed to respond to the ALJ's show cause order issued on June 3, 2008 to explain why the matter should not be dismissed for failing to state a claim. The Decision and Recommended Order on Summary Judgment was served on the interested parties in accordance with Section 16 of PERA.

Subsequently, Charging Party submitted a letter responding to the show cause order; however, the letter was received far too late to be considered by the ALJ. Charging Party then requested that the letter be treated as his exceptions to the Decision and Recommended Order on Summary Judgment. The request was granted and the letter considered as his timely exceptions. In his exceptions, Charging Party argues that AFSCME discriminated against him by refusing to "discuss or clarify the time card" issue used by the Employer as the basis for discharge. He also contends that the Employer, the Highland Park School District, discriminated against him and

“falsified statements” relating to his discharge.¹ After thorough review of Charging Party’s exceptions, we find them to be without merit for upsetting the ALJ’s conclusions.

The crux of Charging Party’s claim stems from Respondent’s decision not to pursue arbitration over his termination from an alleged violation of a last chance agreement. He alleges that AFSCME breached its duty of fair representation owed to him. A union's duty of fair representation under PERA consists of three elements: (1) serve the interest of all members without hostility or discrimination; (2) exercise discretion in complete good faith and honesty; and (3) avoid arbitrary conduct. *American Ass’n of Univ Profs, Northern Michigan Univ Chapter*, 17 MPER 57 (2004). Since a union’s duty is to the membership overall, a union has considerable discretion in deciding if a grievance should proceed to arbitration. *Michigan State Univ Admin-Prof’l Ass’n, MEA/NEA*, 20 MPER 45 (2007). A member’s dissatisfaction with their union’s efforts or ultimate decision not to pursue a grievance is insufficient to constitute a breach of the duty of fair representation. *American Federation of Teachers, Local 2000*, 22 MPER 21 (2009).

In this matter, Charging Party’s allegations do not support that AFSCME acted arbitrarily, discriminatory or in bad faith in deciding against arbitration. At best, the record supports Charging Party’s discontentment with the union’s decision. Where, as in this case, a charge fails to state a claim under PERA, it is subject to dismissal under Rule 165 of the General Rules of the Michigan Employment Relations Commission, 2002 AACRS, R 423.165. Furthermore, Charging Party failed to timely respond to the show cause order and explain why the ALJ should not dismiss the charge. Failing to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Accordingly, we adopt the Administrative Law Judge’s findings of fact and conclusions of law that the charge be dismissed for failure to state an actionable claim.

ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

¹ A separate decision is being issued concurrently on these allegations. See *Highland Park Sch Dist -and- Shepard*, 22 MPER ____ (Case No. C08 F-109).

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

In the Matter of:

AMERICAN FEDERATION OF STATE COUNTY
AND MUNICIPAL EMPLOYEES (AFSCME), COUNCIL 25,
Respondent-Labor Organization,

-and-

Case No. CU08 F-028

WALTER SHEPARD,
An Individual Charging Party.

APPEARANCES:

Walter Shepard, 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), on behalf of the Michigan Employment Relations Commission. 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 4, 2008, Walter Shepard (the Charging Party) filed a Charge form in this matter with various attached documents related to his termination from employment with the Highland Park School District and related to the decision by the Respondent Union Michigan AFSCME Council 25 not to pursue a grievance over Shepard's termination to arbitration. The documents revealed that Shepard was fired while on a "last chance agreement" arising from a prior disciplinary suspension from employment. Shepard makes no specific allegation of improper conduct by Respondent.

The allegations filed in this matter did not properly state a claim under the Public Employment Relations Act (PERA), the statute that this agency enforces, and the charge was therefore subject to dismissal as such allegations 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 file either a voluntary withdrawal or a written statement explaining in detail what he believed the Union did that was unlawful and why the charge should not be dismissed.. Charging Party Shepard did not file a response to the order within the twenty-one day limit set by 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). Regardless, the fact that a member expresses generalized 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. Because there is no 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.

I. 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: _____