

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, LOCAL 2074,
Labor Organization-Respondent,

Case No. CU09 D-012

-and-

BEVERLY MOORE,
An Individual- Charging Party.

APPEARANCES:

Beverly Moore, *In Propria Persona*

DECISION AND ORDER

On July 2, 2009, 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:

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, LOCAL 2074,
Respondent-Labor Organization,

Case No. CU09 D-012

-and-

BEVERLY MOORE,
Individual Charging Party.

APPEARANCES:

Beverly Moore, 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 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 1, 2009, a Charge was filed in this matter by Beverly Moore (the Charging Party) asserting that American Federation of State, County and Municipal Employees Local 2074 (the Union) had violated the Act on unspecified dates. 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.

Additionally, the Charge asserted that the Union violated a Federal statute, 42 USC 1981, over which this agency lacks jurisdiction. For that reason, as a matter of law, the Charge failed to state a claim upon which relief can be granted. For that reason, and pursuant to R 423.165(2)(d), Charging Party was ordered to show cause why the charge should not be dismissed.

Charging Party filed a timely response to the order. The facts as asserted in her charge, her response to the order for more definite statement and the order to show cause are assumed to be true for purposes of reviewing the question of summary disposition. Charging Party asserts several separate claims. The first is that she feels there was an unreasonable delay in handling a grievance which was filed in October of 2008 and which was not answered by management until January of 2009. Moore indicates she withdrew that grievance after receiving management's answer. She next complains that an apparently separate grievance matter was initiated on February 24, 2009 and was not answered by management prior to March 18, 2009. While Moore acknowledges that the Union investigated her claims and conferred repeatedly with her regarding the second grievance, she believes it should have been resolved more quickly. The third dispute arose from Moore's concerns over her belief that she had not been properly credited with having taken certain career advancement classes. As to the final dispute, Moore does not identify any contractual violation by the Employer, nor does she assert that she sought to pursue a grievance over the matter. In addition to asserting violations of PERA, Moore asserts that the Union violated 42 USC 1981 and the Americans with Disabilities Act.

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 Moore. 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 Moore's allegation that the Union took too long to address two grievance matters, one of which Moore withdrew after receiving management's answer, and the other of which was a mere several months old when the Charge was filed. A union does not breach its legal duty of fair representation merely by a delay in processing grievances, if the delay does not cause the grievance to be denied. *Service Employees International Union, Local 502*, 2002 MERC Lab Op 185. The fact that a member is dissatisfied 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'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-making regarding a particular 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.

The conclusory allegations in the charge in this matter, even if proven, 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. The allegations regarding alleged violations of 42 USC 1981 and the Americans with Disabilities Act are not within the jurisdiction of this agency, and therefore, must be dismissed.

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: July 2, 2009