

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

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization-Respondent,

Case No. CU09 C-009

-and-

GREGORY COLLINS,
An Individual-Charging Party.

APPEARANCES:

Pinsky, Smith, Fayette & Kennedy, L.L.P., by Michael L. Fayette, for the Labor Organization

Gregory Collins, *In Propria Persona*

DECISION AND ORDER

On April 16, 2009, Administrative Law Judge (ALJ) Doyle O'Connor issued his Decision and Recommended Order on Summary Disposition in the above matter finding that the charge filed by Charging Party, Gregory Collins, against Respondent, Teamsters Local 214¹ (Union) failed to state a claim upon which relief could be granted under the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 – 423.217. The charge alleged unfair representation by the Union for “withholding evidence” and “violating the[ir] oath of office”. On March 24, 2009, the ALJ issued a show cause order for Charging Party to explain why the charge should not be dismissed for failure to state a valid claim. In his untimely response to the ALJ’s order², Charging Party provided conclusory allegations that the Union had “singled him out” and treated him discriminatorily by not assisting with his grievance. Concluding that the allegations in the original charge did not support that the Union had violated its statutory duties, the ALJ recommended summary dismissal of the charge. The Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. Charging Party filed exceptions on April 29, 2009, to which Respondent did not file a response.

¹ Teamsters Local 214 is the correct name for the union; however, the original charge reflects the name as Teamsters Traverse City 214.

² Charging Party filed his response to the show cause order on April 15, 2009; one day after the deadline date set by the ALJ. As such, his response was not considered in the ALJ’s Decision and Recommended Order.

In lieu of exceptions, Charging Party filed copies of two grievances that he had submitted to the Union to seek action against his employer. Notwithstanding the improper format, we accepted the grievances as Charging Party's filed exceptions. After careful review of the exceptions, we find them to be without merit.

Discussions and Conclusions of Law

Charging Party's complaint stems from the Union's refusal to file grievances against his employer to enforce the work restrictions issued by his doctor, and to rescind a prior disciplinary action. It is well settled that since a union's duty is to the membership overall, it has considerable discretion in deciding whether or not to file a grievance. *American Ass'n of Univ Profs, Northern Michigan Univ Chapter*, 17 MPER 57 (2004). Also, a member's dissatisfaction with the union's efforts or ultimate decision not to pursue a grievance, in itself, is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Ed Ass'n*, 2001 MERC Lab Op 131.

In this matter, Charging Party's allegations are insufficient to support his claim that the Union acted arbitrarily, discriminatorily or in bad faith for not pursuing the requested grievances. At best, the record reflects discontent with the Union's efforts. To prevail on a complaint of a breach of the duty of fair representation, the allegations must contain more than conclusory statements of improper representation by a union. *Martin v Shiawassee Co Bd of Comm'rs*, 109 Mich App 32, 35 (1981). Further, Charging Party did not timely respond to the ALJ's show cause order, which may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Since the 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 AACS, R 423.165. Accordingly, we adopt the ALJ's findings of fact and conclusions of law that the charge must be dismissed for failure to state a claim under PERA.

ORDER

This unfair practice labor 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: _____

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

In the Matter of:

TEAMSTERS LOCAL UNION NO. 214,
Labor Organization-Respondent,

Case No. CU09 C-009

-and-

GREGORY COLLINS,
An Individual Charging Party.

APPEARANCES:

Gregory Collins, Charging Party appearing on his own behalf

Michael L. Fayette, for Respondent Labor Organization

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

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, this case was assigned to Doyle O'Connor, 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:

Gregory Collins (Charging Party or Collins) filed a charge on March 10, 2009, against the Teamsters Local 214, which in its entirety asserted:

*Not representing me fairly. Violating the oath of office by my business agent
and withholding evidence.*

Such an allegation failed to meet the minimum pleading requirements set forth in R 423.151(2). Collins had previously been expressly cautioned by the Administrative Law Judge, in Case No. C06 B-033, regarding the minimum pleading requirements of the

Commission's Rules. Therefore, pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, Charging Party was granted twenty-one (21) days to file an amended charge, a voluntary withdrawal, or a written statement explaining why the charge should not be dismissed. Pursuant to R 423.162, the Charging Party was additionally ordered to provide a more definite statement of the Charge against the Union. Charging Party Collins did not file any response 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). Regardless, 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. 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.

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: April 16, 2009