

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

In the Matter of:

ANN ARBOR FIRE FIGHTERS ASSOCIATION, IAFF, LOCAL 693,
Labor Organization-Respondent,

Case No. CU08 I-045

-and-

CHRISTOPHER M. NOONAN,
Individual-Charging Party.

_____ /

APPEARANCES:

Helveston & Helveston, by Ronald R. Helveston, Esq., for Respondent

Christopher M. Noonan, *In Propria Persona*

DECISION AND ORDER

On October 20, 2008, Administrative Law Judge Julia C. Stern issued her 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. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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CHRISTOPHER M. NOONAN,
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Christopher M. Noonan, appearing for himself

Helveston & Helveston, by Ronald R. Helveston, Esq., for Respondent

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY DISPOSITION

On September 8, 2008, Christopher M. Noonan, formerly employed as a fire fighter by the City of Ann Arbor, filed the above charge with the Michigan Employment Relations Commission against his collective bargaining representative, the Ann Arbor Fire Fighters Association, IAFF, Local 693, pursuant to Section 10 of the Public Employment Relations Act (PERA or the Act), 1965 PA 379, as amended, MCL 423.210. The charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules pursuant to Section 16 of the Act.

On September 11, 2008, pursuant to Rule 165 of the Commission's General Rules, 2002 AACS R 423.165, I issued an order to Noonan to show cause why his charge should not be dismissed without a hearing because it failed to state a claim upon which relief could be granted under the Act. On October 16, 2008, Noonan filed a timely response to that order.

The Unfair Labor Practice Charge:

Noonan, a fire captain, was terminated from his employment with the City of Ann Arbor's fire department (the department) on December 27, 2007. On January 3, 2008, Respondent filed a grievance asserting that his termination was without just cause under the collective bargaining agreement. On March 6, 2008, after a third step hearing on the grievance, Respondent asked its membership to vote on whether to proceed to arbitration on Noonan's grievance. On March 7, 2008, Respondent's president, Craig Ferris

telephoned Noonan to explain that the membership had voted not to proceed and that, therefore, Respondent would not arbitrate the grievance. Noonan alleges that Respondent acted in bad faith by its handling of the grievance and in making its decision not to proceed to arbitration.

According to the charge, on December 8, 2007, Noonan was called to the office of the assistant chief of the fire department and, in the presence of a Respondent representative, was questioned by two police officers about threats he had allegedly made to his subordinates. Noonan was not told exactly what he was supposed to have said. Noonan was also asked if he had a gun in his personal vehicle on the department's premises in violation of a departmental rule. After the interview, Noonan was escorted from the building, placed on administrative leave with pay, and barred from entering the premises of the fire department pending investigation of the complaints. Shortly thereafter, Noonan was told by the fire chief to submit to a psychological evaluation with a doctor selected by the fire department. Noonan made an appointment but cancelled it after being advised to do so by Respondent. On December 27, 2007, Noonan was terminated. The termination letter stated that a gun had been found in Noonan's vehicle and that the department had confirmed that threats had been made. The letter also stated that Noonan was guilty of insubordination for refusing to submit to the psychological evaluation. On January 27, after receiving the termination letter, Noonan wrote a long letter to the fire department in which he apologized for any remarks he had made, argued that anything he had said had been said in jest, pointed to his long record of service, and asked to be reinstated.

The grievance Respondent filed on January 3 was moved directly to the third step of the grievance procedure. A third step hearing on the grievance was held on February 22, 2008. In attendance at this hearing were the police chief, fire chief and director of human resources for the City of Ann Arbor, Ferris, the chief union steward, and Noonan. Noonan brought his own legal counsel to the meeting, but the attorney was not allowed in the meeting. Noonan asserts that Respondent's failure to object to the department's refusal to permit him to have his own legal counsel at the meeting, and the fact that no first or second step meetings were held on the grievance, showed bad faith on the part of Respondent. At this meeting, Respondent explained that it had advised Noonan to cancel his appointment for a psychological evaluation and asked the department to rescind the insubordination charges. The department agreed. Noonan made a statement at the meeting about the other allegations, but Respondent's representatives did not speak on his behalf about the allegations. The department did not agree to reinstate Noonan.

As noted above, Respondent asked its membership to vote on whether to take Noonan's grievance to arbitration at a membership meeting held on March 6, 2008. Noonan was allowed to address the membership, but his attorney was not permitted at the meeting. Two police officers attended him while he made his statement to the members. Noonan asserts that barring his attorney from the meeting prejudiced his case, and that the presence of the two police officers made it appear to the membership that he was guilty. Noonan was not allowed to remain for the vote. Noonan asserts that these actions demonstrated that Respondent did not act in good faith when it conducted a vote on

whether to proceed to arbitration. The following day, Noonan was told by Respondent president Ferris that the membership had voted not to take his grievance to arbitration. According to the charge, during Noonan's sixteen years of employment, Respondent's membership had never before voted not to proceed to arbitration on a discharge grievance. Noonan asserts that the fact that Respondent made this decision in his case is further evidence that the decision was made in bad faith.

Discussion and Conclusions of Law:

Section 16(a) of PERA states, "No complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the commission and the service of a copy thereof upon the person against whom the charge is made." The Commission does not have authority to remedy unfair labor practices occurring more than six months before the date that the charge is filed and served on the respondent. The statute of limitations in Section 16(a) is jurisdictional, and the Respondent is not required to raise it as a defense. *Walkerville Rural Community Schools*, 1994 MERC Lab Op 582, 583. The limitation period under PERA commences when the person knows of the act which caused his injury and has good reason to believe that the act was improper. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). When the claim is that a union has failed or refused to take action on behalf of a member, the statute of limitations begins to run when the charging party should have reasonably realized that the union would not act on his or her behalf. *Washtenaw Co Cmty Mental Health*, 17 MPER 45 (2004). According to the charge, Noonan was told by Respondent that it would not proceed to arbitration on his grievance on his behalf on March 7, 2008. Thus, Noonan knew that Respondent would not arbitrate his grievance six months and one day before he filed his charge with the Commission. The other conduct of which Noonan complains also occurred outside the statutory limitations period. I conclude, that Noonan's charge was untimely filed and must be dismissed on this basis.

I also find that Noonan has failed to allege facts to support his claim that Respondent violated its duty of fair representation by its decision not to arbitrate his grievance. As long as it exercises its discretion in good faith, a union has considerable latitude in deciding how or whether to proceed with a particular grievance. A union must be allowed to evaluate each grievance on its individual merit. Because the union owes a duty to its membership as a whole, it has the right to weigh the cost of arbitration against the likelihood of success. *Lowe v Hotel and Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146. (1973). When a union makes a deliberate decision not to pursue a grievance, that decision is not arbitrary as long as it is within a broad range of reasonableness. *Air Line Pilots Ass'n v O'Neill*, 499 US 65, 67 (1991); *Ann Arbor Pub Schs*, 16 MPER 15 (2003); *City of Detroit (Fire Dep't)*, 1997 MERC Lab Op 31, 34-35. The fact an individual member is dissatisfied with a union's efforts or its ultimate decision is insufficient to demonstrate a breach of the duty of fair representation. *Eaton Rapids Ed Ass'n*, 2001 MERC Lab Op 131. In Noonan's case, as indicated by their behavior at his third step grievance meeting, Respondent's representatives evidently determined that the evidence against Noonan was strong enough to justify his termination. Noonan has not alleged any facts in his charge suggesting that Respondent's

decision was based on factors other than Respondent's assessment of the merits of his case. I conclude that Noonan's charge should also be dismissed for failure to state a claim upon which relief could be granted. I recommend, therefore, that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____