

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, LOCAL 1583,
Labor Organization-Respondent,

Case No. CU09 H-023

-and-

ALEXANDER L. WILLIAMS,
An Individual-Charging Party.

APPEARANCES:

Cassandra D. Harmon Higgins, Staff Attorney for AFSCME Council 25, for Respondent

Alexander L. Williams, *In Propria Persona*

DECISION AND ORDER

On September 21, 2009, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was 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**

In the Matter of:

Case No. CU09 H-023

AFSCME LOCAL 1583,
Labor Organization-Respondent,

-and-

ALEXANDER L. WILLIAMS,
An Individual Charging Party.

APPEARANCES:

Alexander L. Williams, appearing on his own behalf

Cassandra D. Harmon Higgins, Staff Attorney, for Respondent

**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 David M. Peltz, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

The Unfair Labor Practice Charge and Order to Show Cause:

On July 30, 2009, Alexander L. Williams filed an unfair labor practice charge against his Union, AFSCME Local 1583. The charge describes an incident which allegedly occurred on or around February 11, 2009 in which Williams and other employees attempted to decertify Local 1583, and asserts generally that the Union violated the Act by failing to represent the Charging Party in the following manner:

The union doesn't fight for job losses, job losses seem to be ok [sic] If your [sic] friends of Gloria Peterson and Angela Dameron you will be protected and if you are black. Also Angela has an attitude for me for discussions on the phone trying to [get] her to do her job and getting things done or find answers to some of the problems. Both [G]loria Peterson president Angela Dameron told me they will not represent me nor my wife. My wife had a problem with a workers comp case, and Angela Dameron didn't do anything to help her and Kim Copeland was out side [sic] while her special conference took places moking [sic] after the meeting

then Kim Copeland showed up. Angela Daweron wont talk to me at all or call back.

In an order issued on August 20, 2009, I directed Williams to show cause why the charge should not be dismissed as untimely, for noncompliance with the minimum pleading requirements set forth in R 423.151(2) and for failure to state a claim upon which relief can be granted under PERA. Charging Party did not file a response to that order.

Discussion and Conclusions of Law:

The failure to respond to an order to show cause issued pursuant to Rule 165, R423.165, of the General Rules and Regulations of the Employment Relations Commission may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In any event, accepting all of the allegations in the charge as true, dismissal of the charge on summary disposition is warranted.

R 423.151(2) requires that an unfair labor practice charge include a clear and complete statement of the facts which allege a violation of PERA, including the date of occurrence of each particular act and the names of the agents of the charged party who engaged therein and the particular sections of PERA alleged to have been violated. In the instant case, the charge asserts generally that the Union violated the Act by failing to represent Williams and his wife and includes several examples of Respondent's alleged improprieties. However, the only dates specifically referenced in the charge are those relating to the decertification effort in which Charging Party allegedly participated on around February 11, 2009. The remaining allegations must be dismissed as untimely pursuant to Section 16(a) of PERA, as there is no indication that they involved conduct which occurred within six months prior to the filing of the charge.

The charge must also be dismissed in its entirety for failure to state a claim under the Act. A union's duty of fair representation is comprised of three distinct responsibilities: (1) to serve the interests of all members without hostility or discrimination toward any; (2) to exercise its discretion in complete good faith and honesty, and (3) to avoid arbitrary conduct. *Vaca v Sipes*, 386 US 171 (1967); *Goolsby v Detroit*, 419 Mich 651 (1984). Within these boundaries, a union has considerable discretion to decide how or whether to proceed with a grievance, and must be permitted to assess each grievance with a view to its individual merit. *Lowe v Hotel Employees*, 389 Mich 123 (1973); *International Alliance of Theatrical Stage Employees, Local 274*, 2001 MERC Lab Op 1. The union's ultimate duty is toward the membership as a whole, rather than solely to any individual. The union is not required to follow the dictates of any individual employee, but rather it may investigate and handle the case in the manner it determines to be best. *Detroit Police Lts and Sgts*, 1993 MERC Lab Op 729.

The Commission has "steadfastly refused to interject itself in judgments" over grievance and other decisions by unions despite frequent challenges by employees who perceive themselves as adversely affected. *City of Flint*, 1996 MERC Lab Op 1, 11. The Union's decision on how to proceed 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. To prevail on a claim of unfair

representation, a charging party must establish not only a breach of the union's duty of fair representation, but also a breach of the collective bargaining agreement by the employer. *Goolsby v Detroit*, 211 Mich App 214, 223 (1995); *Knoke v East Jackson Public School District*, 201 Mich App 480, 488 (1993).

In the instant case, the charge fails to set forth any factually supported allegation which, if true, would establish that AFSCME Local 1583 acted arbitrarily, discriminatorily or in bad faith with respect to Charging Party. There is also no allegation that Williams' unidentified employer has breached the collective bargaining agreement. Accordingly, I conclude that the charge fails to state a claim for which relief can be granted under PERA.

For the above reasons, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge in Case No CU09 H-023 be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: September 21, 2009