

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

In the Matter of:

DETROIT FEDERATION OF TEACHERS,
Labor Organization-Respondent,

Case No. CU11 E-015

-and-

DURELLE WILLIAMS,
An Individual-Charging Party.

APPEARANCES:

Sachs Waldman, P.C., by Marshall J. Widick, for the Labor Organization

Durelle Williams, *In Propria Persona*

DECISION AND ORDER

On July 21, 2011, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order on Summary Judgment in the above matter finding that the unfair labor practice charge filed against Respondent, Detroit Federation of Teachers (DFT or Union) 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, Durelle Williams, failed to allege facts to support a claim that the DFT violated its duty of fair representation in handling his grievance request. Charging Party also failed to respond to the ALJ's show cause order issued on June 16, 2011 requesting that he amend the charge or explain why the matter should not be dismissed for failing to state a claim under PERA. The Decision and Recommended Order on Summary Judgment was served on the interested parties in accordance with Section 16 of PERA.

On August 9, 2011, we granted a request from Charging Party that extended his timeline for filing exceptions until September 14, 2011. Subsequently, he filed exceptions on the deadline date. The exceptions, in sum, mostly restate assertions contained in the initial charge. Charging Party also contends that the ALJ erred in her comment pertaining to his workplace discipline record, and re-emphasizes his disagreement with the Union's conclusion that his grievance lacked merit. After careful review, we find Charging Party's exceptions lack merit.

We adopt the factual summary provided in the ALJ's Decision and Recommended Order and will not repeat it here, unless necessary. We also review this matter in a light most favorable to Charging Party to determine the appropriateness of the ALJ's recommendation for summary dismissal of the charge against Respondent.

The crux of Charging Party's claim stems from Respondent Union's decision not to file a grievance that it believed lacked merit. As such, Williams asserts that the Union breached its statutory duty by not "fairly" representing him. As the ALJ notes, 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 this duty is owed to the membership overall, it gives a union considerable discretion in deciding what course to undertake on all grievance matters. *Michigan State Univ Admin-Prof'l Ass'n, MEA/NEA*, 20 MPER 45 (2007). Therefore, a union may decide whether to honor a member's grievance request based on what it perceives, in good faith, is in the best interest of the overall unit, even if that decision conflicts with the desires of an individual member. *Eaton Rapids Ed Ass'n*, 2001 MERC Lab Op 131, 134. Further, a member's dissatisfaction with their union's decision or efforts, alone, does not provide sufficient basis for a breach of the duty of fair representation charge. *American Federation of Teachers, Local 2000*, 22 MPER 21 (2009).

We agree with the ALJ that the charge is void of factually based allegations to support a claim that the Union acted arbitrarily, discriminatory or in bad faith by refusing to file Charging Party's grievance. The record does support Williams' discontent with the Union's efforts based on his conclusory allegations against the DFT. However, it is well settled that conclusory statements of union misconduct, alone, cannot sustain a breach of duty complaint against a union. *UAW, Local 771*, 24 MPER 3 (2011). 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 AACRS, R 423.165. Further, Charging Party failed to respond to the ALJ's show cause order, which in itself, may warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). In light of the above, we adopt the Administrative Law Judge's factual findings and conclusions of law that the charge should be dismissed for failure to state a claim under PERA.

ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Christine A. Dardarian, Commission Member

Dated: _____

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

DETROIT FEDERATION OF TEACHERS,
Respondent-Labor Organization,

Case No. CU11 E-015

-and-

DURELLE WILLIAMS,
An Individual-Charging Party.

Appearances:

Sachs Waldman, by Marshall J. Widick, for Respondent

Durelle Williams, appearing for himself

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

On June 2, 2011, Durelle Williams filed the above unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against his collective bargaining representative, the Detroit Federation of Teachers, pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the Michigan Administrative Hearing System.

On June 16, 2011, pursuant to Rule 165 of the Commission's General Rules, 2002 AACRS, R 423.165, and Rule 151(2)(c) of these rules, R 423.151(2)(c) I issued an order directing Williams to amend his charge against the Respondent or show cause why it should not be dismissed for failure to state a claim under PERA. In this order, I noted that Commission Rule 151(2)(c) requires a charging party to include a statement of facts in his charge, including the dates of occurrence of each allegedly unlawful act, and to explain how the respondent's conduct violated PERA. I concluded that Williams' charge, as filed, failed to comply with this rule. Williams was cautioned that if he did not respond to the order, I would recommend that his charge be dismissed. Williams did not respond to my order. Based upon the facts alleged by Williams as set forth below, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge and Facts:

According to his charge, Williams was employed by the Detroit Public Schools (the Employer) as a substitute teacher. On or around November 29, 2010, according to Williams, four students falsely accused Williams of misconduct. The students submitted written statements. They were interviewed and tape recordings were made of these interviews. Sometime after these accusations were made, on a date not set forth in the charge, Williams was terminated. The termination was based on the November 2010 accusations and on previous charge(s) of misconduct made against him, including one which, according to Williams, was successfully grieved by Respondent in 2007 and should not have been in his personnel file.

Williams asserts that Respondent did not represent him fairly. He asserts that after he was terminated, he filed a grievance “without any response from the Union.” This is the only specific act or omission by Respondent which Williams mentions in his charge.

Discussion and Conclusions of Law:

A union representing public employees in Michigan owes these employees a duty of fair representation under Section 10(3) (a) (i) of PERA. The union’s legal duty 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. *Goolsby v Detroit*, 419 Mich 651,679(1984); *Eaton Rapids EA*, 2001 MERC Lab Op 131,134. See *Vaca v Sipes*, 386 US 171, 177 (1967).

“Bad faith,” under this standard, indicates an intentional act or omission undertaken by the union dishonestly or fraudulently. *Goolsby* at 679. A union acts in bad faith when it “acts with an improper intent, purpose, or motive . . . encompass[ing] fraud, dishonesty, and other intentionally misleading conduct.” *Merritt v International Ass’n of Machinists and Aerospace Workers*, 613 F3d 609, 619 (CA 6, 2010), citing *Spellacy v Airline Pilots Ass’n-Int’l*, 156 F3d 120, 126 (CA 2, 1998). “Arbitrary” conduct includes (a) impulsive, irrational or unreasoned conduct, (b) inept conduct undertaken with little care or with indifference to the interests of those affected, (c) the failure to exercise discretion, and (d) extreme recklessness or gross negligence. *Goolsby* at 682. A union may violate its duty of fair representation if it acts with reckless disregard for the interests of its members. For example, a union’s unexplained failure to meet a time deadline for processing a grievance was held to constitute a breach of its duty when this failure resulted in the dismissal of the grievance. *Goolsby*. supra. However, as long as it acts in good faith, a union has considerable discretion to decide how or whether to proceed with a grievance, and is 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.

As I noted in my June 16, 2011 order, Williams’ charge, as filed, does not contain a clear and complete statement of facts alleging a breach by Respondent of its duty of fair representation as required by Rule 151(2) (c). Williams does not specifically allege that Respondent was guilty of arbitrary conduct when it failed to respond to his grievance, and he does not assert facts which

could support that conclusion. Williams also does not allege that Respondent had an improper motive for failing to respond. I find that since Williams' charge does not set forth any facts which would support a claim that Respondent acted arbitrarily, discriminatorily or in bad faith with respect to his grievance, it fails to state a claim upon which relief can be granted under PERA. 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
Michigan Administrative Hearing System

Date: _____