

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

In the Matter of:

SEIU LOCAL 517M,
Labor Organization - Respondent,

-and-

CAROLYN JAMES,
An Individual Charging Party.

Case No. CU12 E-023
Docket No. 12-000866-MERC

APPEARANCES:

Howard F. Gordon, Staff Attorney, for Respondent

Carolyn James, *In Propria Persona*

DECISION AND ORDER

On March 28, 2013, Administrative Law Judge David M. Peltz issued a 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

Edward D. Callaghan, Commission Chair

Nino E. Green, Commission Member

Robert S. LaBrant, Commission Member

Dated: _____

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

In the Matter of:

SEIU LOCAL 517M,
Respondent-Labor Organization,

Case No. CU12 E-023
Docket No. 12-000866-MERC

-and-

CAROLYN JAMES,
An Individual Charging Party.

APPEARANCES:

Howard F. Gordon, Staff Attorney, appearing on behalf of the Labor Organization

Carolyn James, appearing on her own behalf

**DECISION AND RECOMMENDED ORDER
ON SUMMARY DISPOSITION**

This case arises from an unfair labor practice charge filed on May 24, 2012 by Carolyn James against the Service Employees International Union (SEIU) Local 517M. James filed a proposed amendment to the charge on February 11, 2013. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC).

The following facts are derived from the allegations set forth in the unfair labor practice charge and the proposed amended charge filed by James on February 11, 2013. Charging Party worked as a custodial supervisor for Wayne State University until July 1, 2011, when she was notified that her employment with the University had been terminated. The University denied a grievance challenging Charging Party's termination on July 18, 2011. A third-step grievance hearing was held on December 14, 2011, following which SEIU Local 517M president Yolanda Langston told James that the Union was "definitely" taking her case to arbitration. Over the course of the next four months, Charging Party had multiple conversations with Union representatives which caused her to believe that the grievance was still moving forward. However, on or about April 11, 2012, Charging Party learned that the contractual time period for filing for grievance arbitration had expired. Shortly thereafter, James filed the instant charge

alleging that the Union violated its duty of fair representation by failing to keep her apprised as to the status of the grievance.

The parties appeared for hearing before the undersigned on September 13, 2012. During a pretrial conference between the parties and myself concerning the charge, SEIU attorney Howard Gordon asserted that Respondent had filed a grievance on behalf of James and advanced the matter through the contractual grievance procedure before deciding not to proceed to arbitration over the dispute. Gordon claimed that he personally notified Charging Party of the Union's decision not to advance the grievance to arbitration by letter dated April 4, 2012. In the letter, a copy of which was provided during the pretrial conference, Gordon asserted that both he and the SEIU executive board had reviewed the facts surrounding James' termination and determined that the matter would not proceed to arbitration because "there is no reasonable opportunity for success on the merits of your case as presented." Gordon concluded in the letter by indicating that this decision would be final absent a request from Charging Party for a special hearing before Respondent's executive officers. Pursuant to the instructions in the letter, Charging Party had ten working days in which to file such a request.

It is undisputed that Charging Party did not file a request for a special conference. However, James claims that she never received the Gordon letter and that she was unaware of its existence until a copy was provided to her by the Union at the pretrial conference. After some discussion, Respondent agreed to waive the ten-day time limit and allow James the opportunity to present her appeal at a special hearing before the SEIU executive officers. In addition, Respondent promised that if its executive officers concluded that the grievance has merit, the Union would contact the Employer and seek a waiver of the contractual grievance timelines. Based upon those representations, Charging Party consented to an adjournment of the hearing.

I agreed to hold this matter in abeyance, but cautioned Charging Party that her charge as filed failed to state a claim against the Union under PERA because there had been no factually supported allegations which, if true, would establish that Respondent had breached its duty of fair representation. This conclusion was based upon the fact that Charging Party was not proceeding on the theory that the Union had acted arbitrarily, discriminatorily or in bad faith by failing or refusing to advance the grievance to arbitration, nor had James asserted that her termination breached the collective bargaining agreement. In fact, James conceded on the record that the instant charge was premised solely upon a perceived lack of communication from Respondent concerning the status of the grievance. Accordingly, I indicated to Charging Party that if she still wished to proceed with this matter following the issuance of a decision by the SEIU executives, she would have to file an amended charge containing factually supported allegations which, if true, would establish that the Union breached its duty of fair representation at the executive level.

On February 11, 2013, James filed a proposed amended charge along with supporting documentation. The proposed amended charge does not assert that the Union failed to conduct a special conference as promised during the September 13, 2012 pretrial conference, nor does the proposed amended charge contain any suggestion that the SEIU executive board acted unlawfully in reviewing her case. In fact, the proposed amended charge is silent with respect to the Union's handling of the grievance challenging Charging Party's termination, whether before

or after the pretrial conference in this matter. Instead, the proposed amended charge sets forth a litany of allegations concerning the conduct of Union representatives occurring between 2006 and 2009, well before the events giving rise to the charge.¹ For example, the proposed amended charge asserts that in December of 2009, Respondent refused to challenge the University's decision to discipline James for poor work performance and for failing to enforce attendance standards. The proposed amended charge further asserts that she has an "awkward relationship" with Carla Crawford, the current president of SEIU Local 517M.

Discussion and Conclusions of Law:

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). The union's actions will be held to be lawful as long as they are 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 grievances 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 fact that an individual member is dissatisfied with the union's efforts or ultimate decision is insufficient to constitute a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131. Because the union's ultimate duty is toward the membership as a whole, the union is not required to follow the dictates of the individual employee, but rather it may investigate and take the action it determines to be best. A labor organization has the legal discretion to make judgments about the general good of the membership and to proceed on such judgments, despite the fact that they may conflict with the desires or interests of certain employees. *Lansing Sch Dist*, 1989 MERC Lab Op 210, 218, citing *Lowe v Hotel Employees*, 389 Mich 123 (1973). A union does not breach its duty of fair representation merely by delay in the processing of a grievance if that delay does not result in the denial of the grievance. *Teamsters State, County and Municipal Workers, Local 214*, 1995 MERC Lab Op 185, 189.

Despite having been given a full and fair opportunity to do so, Charging Party has failed to set forth any factually supported allegation which, if true, would establish that the Union acted arbitrarily, discriminatorily or in bad faith. The original charge, as explained by James at the pretrial conference, was premised upon a perceived lack of communication by the Union with respect to the status of the grievance challenging Charging Party's termination. However, the Commission has repeatedly held that a lack of communication alone is insufficient to establish a breach of the duty of fair representation. See e.g. *Detroit Ass'n of Educational Office Employees, AFT Local 4168*, 1997 MERC Lab Op 475; *Technical, Professional and Officeworkers Ass'n of*

¹ James filed a similar unfair labor practice charge in 2006 alleging a breach of the duty of fair representation by the SEIU, as well as a charge against her employer, Wayne State University. In a decision issued on October 16, 2008, I concluded that both of the charges were untimely and that James had failed to set forth facts establishing that the Union had acted arbitrarily, discriminatorily or in bad faith with respect to its representation of James following her 2006 discharge. The recommended order became final on January 2, 2009 after no exceptions were filed. *Wayne State University*, 22 MPER 1 (2009).

Michigan, 1992 MERC Lab Op 117; *Southfield Schools Employees Ass'n*, 1981 MERC Lab Op 710. At the September 13, 2012 pretrial conference in this matter, Respondent agreed to waive the 10-day time limit and allow James to address the SEIU executive officers concerning the Union's earlier determination that the grievance lacked merit. There is no allegation that the Union breached that agreement or that the executive officers rendered a decision regarding her appeal which was unlawful. Under such circumstances, Charging Party has failed to establish that she was prejudiced by any earlier lack of communication on the part of the Union or any delay by Respondent in processing the grievance.

Similarly, the proposed amended charge fails to state a claim for which relief can be granted under PERA. At the pretrial conference, I indicated that if James was still dissatisfied with the Union after review by the SEIU executive officers, she must file an amended charge setting forth factually supported allegations which, if true, would establish that the Union breached its duty of fair representation at the executive level. The proposed amended charge contains no such assertion. Rather, the proposed amended charge concerns incidents occurring between 2006 and 2009, well before the events giving rise to the original charge. The proposed amended charge, as written, does not adequately explain how any of these incidents establish that the Union has breached its duty of fair representation in violation of the Act. Moreover, given that none of the events described in the proposed amended charge occurred within six months of the filing of the original charge in this matter, the allegations are untimely under Section 16(a) of PERA, which prohibits the Commission from remedying any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission and the service of the charge upon each of the named respondents. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Comm Schools*, 1994 MERC Lab Op 582, 583.

Having concluded that Charging Party has failed to set forth any factually supported allegation which, if true, would establish that the Union acted arbitrarily, discriminatorily or in bad faith with respect to James during the six-month period preceding the filing of the original charge, I hereby recommend that the Commission issue the following order.

RECOMMENDED ORDER

The unfair labor practice charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: March 28, 2013