STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

CITY OF BATTLE CREEK,
Respondent-Public Employer in Case No. C04 C-082,

-and-

AFSCME, LOCAL 1387,
Respondent-Labor Organization in Case No. CU04 C-019,

-and-

WILLIE C. TAYLOR,
An Individual-Charging Party.
_____/

APPEARANCES:

Russell W. Claggett, Esq., Employee Relations Director, for the Public Employer

Miller Cohen, P.C., by Richard G. Mack, Esq., for the Labor Organization

Willie C. Taylor, In Propria Persona

DECISION AND ORDER

On July 26, 2005, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondents have not engaged in and were 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

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Nora Lynch, Commission Chairman

_____
Nino E. Green, Commission Member

Dated: _____

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Lansing, Michigan, on February 18, 2005, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC or Commission) pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. Based on the record and a post-hearing brief filed by the labor organization on April 13, 2005, I make the following findings of fact and conclusions of law.

The Unfair Labor Practice Charges:

On March 22, 2004, Charging Party Willie C. Taylor filed unfair labor practice charges against Respondent City of Battle Creek and Respondent AFSCME, Local 1387. His charge against the Employer reads:

> The City of Battle Creek discriminated against me in regards to termination for a 2nd violation of the city policy and federal regulations regarding CDL license. A white employee that holds a CDL also was tested positive on a drug test two times and still today is employed with the City of Battle Creek and the City cites their reasons are that this policy was not in place at the time of the first incident, but on her second testing positive on 2/20/02 incident, the City did not do anything even after they gave her a letter of intent to terminate.
>
> I have obtained certain documents that support my claim. I feel that I have been singled out because certain people within my department did not like me and were friends with people in my union which did not help me in any way but just went through the motion of pretending to help me.

The charge against the Union reads:

> Unfair representation in regard to grievance filed in ref. (sic) to my termination from the City of Battle Creek. The union alleged that I did not want to pursue a grievance when in fact they had not talked to me about any grievance. When I asked them about filing a grievance, the union then filed knowing full well that it was outside the window for filing this grievance as the letter for the grievance states for the denial, knowing that any termination issue that arise, a grievance is filed automatically within 5 working days, to wit, this was not as stated in my charge against the City of Battle Creek, the union did not fully represent me.

Findings of Fact:

Charging Party was employed by the City of Battle Creek and was a member of AFSCME, Local 1387. As a vactor driver/operator, Charging Party was required to possess a valid commercial drivers license (CDL) and to submit to and pass random drug screens and alcohol tests. On July 29, 2003, after testing positive for marijuana, one of five prohibited controlled substances, Charging Party was suspended for thirty days without pay. He was told that his return to work and continued employment were conditioned upon receiving a negative test result and successful completion of a job jeopardy program. He was also advised that further violations would result in his termination.

In January 2004, Charging Party tested positive for cocaine, another prohibited controlled substance, and was placed on administrative leave for approximately one week. During that time, in an attempt to preserve Charging Party's job, the Union arranged and paid for Charging Party to take a second drug test. Although the test was negative, the Employer rejected the Union's suggestion that Charging Party be assigned to a job that did not require a CDL license and effective February 3, 2004, terminated his employment. Article 4 of the collective bargaining agreement between the Employer and the Union requires the Union to file a written grievance protesting a discharge within five working days after receiving written notice of an employee's discharge.

Within a day or two of his termination, Andrew Howlett, a union steward and Charging Party's co-worker and friend, asked Charging Party if he wished to file a grievance and was told, "No, we'll just let it go." Three weeks later, according to Howlett, Charging Party told him that he wanted a grievance to be filed on his behalf. Thereafter, on February 25, 2004, the Union filed a grievance requesting that Charging Party be demoted to a position that did not require a CDL license and that he be made whole. The Employer informed the Union that the grievance did not comply with the requirement in the parties' collective bargaining agreement that grievances be filed within five working days after written notice of a discharge. Moreover, the Employer informed the Union that even if the grievance had been timely filed, it would be denied because Charging Party's termination was based upon a second violation of policies and regulations regarding CDL license holders.

Conclusions of Law:

Charging Party did not file a post-hearing brief. However, he asserts in his charge that his termination was discriminatory because a white employee who also tested positive for drugs is still employed. He also claims that he was singled out because certain people within his department did not like him and were friends with people in the Union. At the conclusion of Charging Party's case, I granted the Employer's motion for summary disposition. I agreed with the Employer's argument that Charging Party presented no evidence that his termination resulted from his involvement in protected concerted activity. It is well settled that alleged violations of Civil Rights statutes, such as complaints of racial discrimination and hostile work environment are outside the scope of PERA and do not state a claim for which relief can be granted. *City of Lansing*, 17 MPER 62 (2004); *City of Highland Park Fire Dep't*, 1985 MERC Lab Op 1266.

In his charge against the Union, Charging Party claims that the Union never talked to him about filing a grievance, and when he asked about filing a grievance, one was filed although the Union knew that it was untimely. The duty of fair representation requires a union to (1) serve the interest of all members without hostility or discrimination, (2) exercise discretion with complete good faith and honesty, and (3) avoid arbitrary conduct. *Goolsby v Detroit,* 419 Mich 651, 664. The evidence presented by Charging Party does not demonstrate that the Union violated its duty to fairly represent him.

Union steward Howlett, Charging Party's own witness, disputed Charging Party's assertion that no one talked to him about filing a grievance after he was terminated. Howlett, Charging Party's co-worker and friend, testified credibly that within a day or two of Charging Party's termination, he asked Charging Party if he wished to file a grievance and was told, "No, we'll just let it go." There is nothing in the collective bargaining agreement that requires, as Charging Party claims, the Union to automatically file a grievance protesting an employee's discharge. I find, therefore, that the Union did not violate its duty to fairly represent Charging Party by filing a grievance, at Charging Party's request, three weeks after he was terminated. The record fails to demonstrate that the Union's actions were arbitrary or in bad faith. Based on the above discussion, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: