

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT BOARD OF EDUCATION,

Respondent-Public Employer in Case No. C97 I-204,

-and-

DETROIT FEDERATION OF TEACHERS,

Respondent-Labor Organization in Case No. CU97 I-34,

-and-

SHEILA KNUBBE,

An Individual Charging Party.

APPEARANCES:

Gordon J. Anderson, Esq., Office of Labor Affairs, for the Public Employer

Julia A. Petrik, Esq. & Eileen Nowikowski, Esq., Sachs, Waldman, O'Hare, Helveston, Bogas & McIntosh, P.C., for the Labor Organization

Sheila Knubbe, *In Pro Per*

**ORDER REMANDING
TO ADMINISTRATIVE LAW JUDGE**

On May 14, 1998, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above case, recommending dismissal of unfair labor practice charges filed against Respondents Detroit Board of Education and Detroit Federation of Teachers under Section 10(1) of the Public Employment Relations Act (PERA), 1947 PA 336, as amended, MCL 423.210; MSA 17.455(10).

On June 8, 1998, Charging Party filed timely exceptions to the ALJ's Decision and Recommended Order. Respondent Detroit Federation of Teachers filed a brief in support of the Decision and Recommended Order on June 23, 1998.

Facts:

Sheila Knubbe was discharged from her position as a tenured teacher with the Detroit Public Schools based on charges of unsatisfactory teaching performance and failure to manage and control her students. On June 11, 1997, Knubbe filed a petition for review with the State Tenure Commission alleging, in part, that the discharge violated the Teacher Tenure Act, MCL 38.101 *et seq.*; MSA 15.2001 *et seq.*

On September 26, 1997, Knubbe filed identical unfair labor practices charges against the Detroit Board of Education and the Detroit Federation of Teachers. The charges alleged that Knubbe was competent to perform her duties and that she was discriminated against on the basis of race, gender, age, height, hair color and residency. Respondent Board of Education filed an answer on January 16, 1998, and requested that the charges be dismissed for failure to allege or establish a violation of PERA. On January 22, 1998, Respondent Detroit Federation of Teachers filed a motion seeking dismissal of all allegations of federal and state law other than those claims arising under PERA. The Union also filed a motion to stay consideration of Knubbe's unfair labor practice charges pending resolution of the tenure commission proceedings. Judge Roulhac granted the Union's motion for stay in an order entered on January 23, 1998.

On February 6, 1998, a tenure commission ALJ issued a preliminary decision and order affirming the discharge. Neither party filed a statement of exceptions to the preliminary decision and order within the 20 period set forth in MCL 38.104(5)(j); MSA 15.204(5)(j). Accordingly, the tenure commission issued a final order on March 27, 1998, adopting the ALJ's denial of Knubbe's appeal.

On May 14, 1998, ALJ Roulhac issued a Decision and Recommended Order dismissing the unfair labor practice charges filed against both the Employer and the Union. With regard to the Detroit Federation of Teachers, the ALJ held that the tenure commission's finding of just cause was a complete defense to Knubbe's assertion that the Union breached its duty of fair representation. The ALJ dismissed Knubbe's charge against the Employer on the ground that Knubbe had failed to state a claim upon which relief could be granted under PERA.

Discussion and Conclusions of Law:

After reviewing the record in its entirety, we conclude that Knubbe should be afforded the opportunity to clarify her allegations against both the Employer and the Union. There is no question that the original charge did not allege any facts which would form the basis of a claim against the Employer under PERA. In her response to the Employer's answer, however, Knubbe asserted that the Employer retaliated against her "as a union member" for filing a grievance concerning an unsatisfactory rating. Similar language was included in Charging Party's exceptions to the ALJ's Decision and Recommended Order. While this allegation is somewhat vague, we find it sufficient to at least suggest the existence of a cognizable claim. Accordingly, we remand to give Knubbe the opportunity to file an amended charge setting forth the factual basis for her contention that the Detroit Board of Education retaliated against her for exercising her right to file a grievance and

clarifying whether the fair representation claim pertains to the alleged act or acts of retaliation by the Employer. The ALJ shall then determine whether the amended charge states a claim upon which relief can be granted under PERA with regard to either the Employer or the Union.¹

There is nothing in the record to support Charging Party's scurrilous attack on ALJ Roulhac's character and integrity. Therefore, her request to disqualify the ALJ is denied.

ORDER

The charges in Case No. CU97 I-34 and Case No. C97 I-204 are hereby remanded to the ALJ for further action as set forth above. Charging Party may file an amended charge within 20 days of the issuance of this order. If no charge is filed within that period, the case shall be dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

¹ Because the Union failed to provide us with a complete copy of the tenure commission's decision, it is impossible to determine whether the retaliation issue was actually litigated in the prior proceeding. It is also unclear whether Knubbe ever made the Union aware of the alleged PERA violation by the Employer. Under such circumstances, it would be premature to make any determination regarding application of the doctrine of collateral estoppel. See *Nummer v Dep't of Treasury*, 448 Mich 534 (1995).

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Respondent - Labor Organization

-and-

SHEILA KNUBBE

Charging Party, An Individual

**Case No. C97 I-204
CU97 I-34**

APPEARANCES:

For the Public Employer:

Office of Labor Affairs

By Gordon J. Anderson, Esq.

For the Labor Organization:

Sachs, Waldman, O'Hare, Helveston, Bogas &
McIntosh, P.C.

By Julie A. Petrik & Eileen Nowikowski, Esqs.

For the Charging Party:

Sheila Knubbe, *In Pro Se*

DECISION AND RECOMMENDED ORDER

ON

REMAND ORDER

On September 26, 1997, Charging Party Sheila Knubbe filed unfair labor practice charges against Respondents Detroit Board of Education and the Detroit Federation of Teachers. Knubbe, a former employee of the Detroit Board of Education and member of the Detroit Federation of Teachers claims that Respondents committed unfair labor practices in connection with her discharge from employment.

On May 14, 1998, I issued a Decision and Recommended Order in the above case recommending dismissal of the unfair labor practice charges filed against Respondents Detroit Board

of Education and Detroit Federation of Teachers under Section 10(1) of the Public Employment Relations Act (PERA), 1947 PA 336, as amended, MCL 423.210; MSA 17.455(10).

Charging Party filed timely exception to the Decision and Recommended Order and Respondent Detroit Federation of Teachers filed a brief in support of the Decision and Recommended Order. On August 10, 1998 the Commission remanded this matter to the me to give Charging Party an opportunity to file an amended charge setting forth the factual basis for her contention that the Detroit Board of Education retaliated against her for exercising her right to file a grievance and to clarify whether the fair representation claim against the Detroit Federation of Teachers pertained to the alleged act or acts of retaliation by the Detroit Board of Education. Charging Party was granted 20 days from the date of the remand order to file an amended charge. The Commission's remand order directed that if no charge was filed within that time period, the cases shall be dismissed.

Charging Party did not filed an amended charge by August 31, 1998. It is therefore recommended that the Commission issue the order set forth below:

Recommended Order

The unfair labor practice charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Roy L. Roulhac
Administrative Law Judge

Dated _____