

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

In the Matter of:

DETROIT FEDERATION OF TEACHERS,  
Labor Organization-Respondent

- and -

Case No. CU06 C-009

NICHOLAS PARHAM,  
Individual Charging Party.

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**APPEARANCES:**

Sachs Waldman, by Mary Ellen Gurewitz, Esq., for the Labor Organization

Nicholas Parham, *In Propria Persona*

**DECISION AND ORDER**

On June 14, 2007, Administrative Law Judge David M. Peltz issued his 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

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Christine A. Derdarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_

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**APPEARANCES:**

Mary Ellen Gurewitz for the Labor Organization

Nicholas Parham *in pro per*

**DECISION AND RECOMMENDED ORDER  
OF ADMINISTRATIVE LAW JUDGE**

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) for the Michigan Employment Relations Commission. This matter comes before the Commission on an unfair labor practice charge filed by Nicholas Parham on March 28, 2006, against the Detroit Federation of Teachers (DFT). The charge alleges that Respondent breached its duty of fair representation in the following manner:

On October 3, 2005, I learned that Keith R. Johnson (DFT representative) lied to me when he said he filed a Step 3 grievance [on] my behalf. He then refused to acknowledge my evidence, and went on to express to me that I should admit my wrongdoings and that he heard me threaten Bonam. I told Keith Johnson that I would not apologize for something I didn't do. Nor would I be intimidated by him.

On May 11, 2006, the DFT filed a motion to dismiss, arguing that the charge is barred because the allegations set forth therein had already been litigated in Case Nos. C05 K-281 & CU05 J-040. That case resulted in a Decision and Recommended Order issued by MERC ALJ Roy Roulhac on March 23, 2006, dismissing the charges filed by Parham against the DFT and the Detroit Public Schools. At the time the instant charge was filed, exceptions in the prior case were still pending before the Commission. In an order entered on May 18, 2006, I notified the parties that this case would be held in abeyance until the Commission issued a decision in Case Nos. C05 K-281 and CU05 J-040.

### The Prior Proceedings

On October 4, 2005 and November 29, 2005, Parham filed unfair labor practice charges against the DFT and the Detroit Public Schools, Case Nos. CU05 J-040 & C05 K-281 respectively, stemming from his termination from employment with the school district on September 13, 2004. With respect to the Union, the charge read, "Failure to represent, conspiracy, harassment, and intimidation. Since May 20, 2003 I've [sought] representation on the matter of my alleged work rule violations which [led] to my termination."

An evidentiary hearing on the charges was held before ALJ Roulhac on January 6, 2006. During the hearing, Parham asserted that the Union violated its duty of fair representation during a disciplinary hearing in January of 2004. Parham's post-hearing brief, which was filed on February 15, 2006, included letters dated October 13, 2005 and November 30, 2005, in which the Union informed Parham that his grievances would not be advanced to arbitration.

In a Decision and Recommended Order issued on March 23, 2006, ALJ Roulhac recommended dismissal of both charges as untimely under Section 16(a) of PERA because they were filed more than six-months after the alleged violations. Parham filed exceptions to the ALJ's decision on March 28, 2006. In his exceptions, which related to the ALJ's findings concerning the DFT only, Parham alleged:

I Nicholas Parham respectfully request that the Honorable Court reconsider hearing my case. Not all my allegations against the Union occurred during January 2004. As I stated in my initial charge with MERC: "Keith R. Johnson flat-out refused to acknowledge my evidence. As recent as October 3, 2005, Keith Johnson has expressed to me that I should admit my wrong doings and that he heard me threaten Bonan. I told him that I would not be intimidated by him." This is when I knew for certain that I was not receiving fair union representation, so the very next day I filed a complaint against the Union with MERC. So with all due respect I say to the Honorable Court that the charge I filed on October 4, 2005 was submitted in a timely fashion. I submitted my charge on the very next day when I knew for certain that my union representation was totally unfair.

On May 24, 2007, the Commission issued a Decision and Order fully adopting the ALJ's findings of fact and conclusions of law and dismissing the charges. The Commission held that the charge against the Union was untimely because Parham knew or should have known that the Union was not representing him at the time of his disciplinary hearing in January of 2004. In so holding, the Commission explicitly rejected Parham's assertion that the charge was timely because it was filed within six months of the statement allegedly made thereafter by DFT representative Johnson:

Even assuming that this statement was in fact uttered, it alone cannot bootstrap Charging Party's allegations into a timely claim for breach of the duty of fair representation. Based on our review of the record, we believe that Charging Party knew or should have known that the Union was not representing him well before

this time. The fact that this statement was made during the statutory period does not change our view that Charging Party's claim against Respondent Union is untimely.

Discussion and Conclusions of Law:

The DFT asserts that Charging Party's litigation of the prior charge precludes Parham from bringing the instant claim. I agree. The prior dispute was between Charging Party and the DFT, as well as the Detroit Public Schools. An evidentiary hearing was held in that case and the matter culminated in a Decision and Order issued by the Commission which constitutes a final decision on the merits. In the context of resolving Charging Party's duty of fair representation claim arising from Parham's termination, the Commission was required to determine when the claim accrued. The Commission held that Parham knew or should have known that the Union was failing to represent him in connection with his termination in January of 2004, and that any statements allegedly made by the Union after that date, including the October 3, 2005 statement by Johnson, were not relevant to the question of whether the charge was timely filed. Because that issue was essential to the resolution of the Union's statute of limitations defense in the prior case, I find that the issue was necessarily determined in that proceeding and that Charging Party is precluded from relitigating it here. Accordingly, I hereby recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charge be dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge

Dated: \_\_\_\_\_