

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

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization - Respondent,

Case No. CU06 L-055

-and-

CYNTHIA CARR-LEE,
An Individual - Charging Party.

_____ /

APPEARANCES:

Cynthia Carr-Lee, In *Propria Persona*

DECISION AND ORDER

On January 19, 2007, Administrative Law Judge Doyle O'Connor issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was 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

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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

In the Matter of:

TEAMSTERS LOCAL 214,
Respondent-Labor Organization,

Case No. CU06 L-055

-and-

CYNTHIA CARR-LEE,
An Individual Charging Party.

APPEARANCES:

Cynthia Carr-Lee, in *pro per*, for the Charging Party

**DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE ON ORDER TO SHOW CAUSE**

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 for hearing to Doyle O'Connor, Administrative Law Judge (ALJ) for the Michigan Employment Relations Commission. Based upon the entire record, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Findings of Fact:

Cynthia Carr-Lee (Charging Party) filed a charge on December 1, 2006, which alleges that she has filed two grievances, in February and April of 2006, which assert that her employer, City of Pontiac, violated the Union contract.¹ She additionally alleges that her Union, Teamsters Local 214, has taken too long to process her grievances to arbitration. Charging Party did not respond to an order to show cause, which was issued on December 21, 2006.

Discussion and Conclusions of Law:

The charge in this matter suggests that the Union breached its statutory duty of fair representation. To establish a violation of the duty of fair representation, the Charging Party must demonstrate that the union's conduct toward the bargaining unit member was arbitrary, discriminatory or done in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). To prevail on such a claim, a charging party must establish not only a breach of the duty of fair representation, but also a breach of the collective bargaining

¹ A charge against the Pontiac was later filed in Case No. C06 L-302, which is the subject of a separate decision.

agreement. *Knoke v E Jackson Pub Sch Dist*, 201 Mich App 480, 485 (1993); *Martin v E Lansing Sch Dist*, 193 Mich App 166, 181 (1992). Allegations in a complaint for a breach of a union's duty of fair representation must contain more than conclusory statements alleging improper representation. *Martin v Shiawassee County Bd of Commrs*, 109 Mich App 32 (1981); *Wayne County Dept Public Health*, 1998 MERC Lab Op 590, 600 (no exceptions); *Lansing School District*, 1998 MERC Lab Op 403.

The charge in this matter fails to make any factual allegation that, if proven, would establish a beach of the Union's obligations to Carr-Lee. There is no allegation that the Union acted out of improper motive. Likewise, there is no allegation that the Union's decision was arbitrary or the result of gross negligence.

The crux of this dispute is Carr-Lee's allegation that the Union has taken too long to process the matter to arbitration, or settle or withdraw the claim. A union does not breach its legal duty of fair representation merely by a delay in processing grievances, if the delay does not cause the grievance to be denied. *Service Employees International Union, Local 502*, 2002 MERC Lab Op 185. The fact Carr-Lee is dissatisfied with her Union's efforts or ultimate decision is insufficient to establish a breach of the duty. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. A union has considerable discretion to decide which grievances to pursue and which to settle. When evaluating whether to accept a grievance, a union also has discretion to consider the likelihood of success and the interest of the union membership as a whole. *Lowe v Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123, 145-146. A union's decision not to proceed to arbitration with a grievance is not arbitrary as long as it is 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 conclusory allegations in the charge in this matter, together with Charging Party's failure to respond to an order to show cause, warrant dismissal for failure to state a claim under the Act.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____