

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

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, LOCAL 345,  
Labor Organization-Respondent,

Case No. CU09 L-044

-and-

DEBRA DAVIS,  
An Individual- Charging Party.

APPEARANCES:

Debra Davis, *In Propria Persona*

**DECISION AND ORDER**

On February 24, 2010, Administrative Law Judge Doyle O'Connor 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. Dardarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES (AFSCME) LOCAL 345,  
Respondent-Labor Organization,

-and-

Case No. CU09 L-044

DEBRA DAVIS,  
An Individual Charging Party.

APPEARANCES:

Debra Davis, Charging Party representing herself

**DECISION AND RECOMMENDED ORDER**  
**OF ADMINISTRATIVE LAW JUDGE**  
**ON SUMMARY JUDGMENT**

Pursuant to the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.201 *et seq*, this case was assigned to Doyle O'Connor, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC). This matter is being decided pursuant to an order to show cause why the charge should not be dismissed for failure to state a claim.

The Unfair Labor Practice Charge:

The Charge against AFSCME Local 345 (the Union), filed on December 3, 2009, asserted that Debra Davis (Charging Party) was injured at work at the Detroit Public Schools in March of 2008; that in November of 2008, she was examined by a doctor and was found capable of returning to work; that she was informed that she no longer had a job and that she sought the assistance of the Union in returning to work. The Charge further asserted that the Employer seemingly treated Davis as a voluntary quit during the time period Davis asserts she was unable to work. The Charge asserted that the Union conferred multiple times with Davis and advised her to apply for re-employment, that she did, and that she was rejected by the Employer. Attached to the Charge were various documents, including a letter of May 21, 2009 from the Employer to Davis rejecting her request for re-employment and asserting that the Employer's records indicate that Davis was previously terminated from employment for "job abandonment". There was no indication of any later efforts by Davis seeking assistance from the Union. The Charge asserted generally that the Union initially responded favorably to Davis' request for

assistance, that it communicated with her repeatedly, but that eventually the Union staff or officers became rude to her, and that ultimately the Union failed to secure her return to work. There is no indication of when the Union allegedly abandoned its efforts on behalf of Davis.

Such allegations failed to meet the minimum pleading requirements set forth in R 423.151(2). Pursuant to R 423.165(2)(d), Charging Party was ordered to file an amended charge, a voluntary withdrawal, or a written statement explaining why the charge should not be dismissed. Charging Party was expressly cautioned that if she did not timely respond to the Order, a decision recommending that the Charge be dismissed without a hearing would be issued. Davis did not file a response to the order.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. The failure to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, the mere fact that a member expresses dissatisfaction with their union's efforts or ultimate decision is insufficient to constitute a proper charge of a breach of the duty of fair representation. *Eaton Rapids Ed Assoc*, 2001 MERC Lab Op 131; *Wayne County DPW*, 1994 MERC Lab Op 855. Because there are no factual allegations in the Charge that, if proved, would support the claim that the Union violated its statutory duties, and because no response was filed to the order to show cause, the charge against the Union must be dismissed as it fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Doyle O'Connor  
Administrative Law Judge  
State Office of Administrative Hearings and Rules

Dated: February 24, 2010