

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

In the Matter of:

WAYNE COUNTY,

Public Employer – Respondent in Case No. C06 D-082

-and-

AFSCME LOCAL 101,

Labor Organization – Respondent in Case No. CU06 D-012

-and-

YOLANDA COFFEE,

An Individual Charging Party.

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APPEARANCES:

Deborah K. Blair, for the Public Employer

Ben K. Frimpong, for the Labor Organization

Yolanda Coffee, *In Propria Persona*

DECISION AND ORDER

On October 12, 2006, Administrative Law Judge Doyle O'Connor 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

Christine A. Derdarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

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WAYNE COUNTY,
Respondent-Public Employer,

-and-
AFSCME LOCAL 101,
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-and-
YOLANDA COFFEE,
An Individual Charging Party.

Case No. C06 D-082 &
CU06 D-012

APPEARANCES:

Deborah K. Blair, for the Public Employer

Ben K. Frimpong, for the Labor Organization

Yolanda Coffee, *In Propria Persona*

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

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

The Unfair Labor Practice Charge and Findings of Fact:

Yolanda Coffee filed a charge on April 5, 2006 asserting that her Employer, Wayne County, had violated her contractual layoff and bumping rights and that her Union, AFSCME Local 101, had improperly failed to pursue a grievance regarding that issue.

Based on the answer filed by Respondent Local 101 on September 11, 2006 and on a motion to dismiss filed by Wayne County on September 18, 2006, separate orders to show cause why the charge should not be dismissed were issued on September 11 and 19, 2006, premised on the undisputed fact that the respondent union had in fact taken the matter to arbitration and that an arbitrator had found that the employer had not violated Coffee's rights. The Charging Party did not file responses to the orders to show cause or the motion to dismiss, even though her request for additional time was granted.

Discussion and Conclusions of Law:

The failure of Charging Party to respond to the order to show cause regarding the charge against Respondent Local 101 in itself warrants dismissal of that charge. Furthermore, 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 in bad faith. *Vaca v Sipes*, 386 US 171, 177 (1967); *Goolsby v Detroit*, 419 Mich 651, 679 (1984). Furthermore, to prevail on such a claim, a complainant must establish not only a breach of the duty of fair representation, but also a breach of the collective bargaining 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). The charge in this matter indicated a concern over whether or not the Union was pursuing grievances on behalf of Coffee. However, it is undisputed that the Union took the matter before a neutral Arbitrator and that Arbitrator found that no contract violation occurred. No violation of the duty of fair representation has been alleged.

Similarly, the failure of Charging Party to respond to the motion to dismiss brought by Wayne County warrants dismissal of that charge. Absent any evidence or allegation that the Employer was motivated by animus as a result of union or other activity protected by Section 9 of PERA, the Commission does not have jurisdiction to make a judgment on the merits or fairness of the actions complained of by the Charging Party in this matter. See e.g. *City of Detroit (Fire Department)*, 1988 MERC Lab Op 561, 563-564; *Detroit Board of Education*, 1987 MERC Lab Op 523, 524. Because there is no allegation that the employer was motivated by union or other activity protected by PERA, the charge against the employer fails to state a claim upon which relief can be granted.

RECOMMENDED ORDER

It is hereby recommended that the unfair labor practice charges be dismissed in their entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge

Dated: _____