STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MT. CLEMENS PUBLIC SCHOOLS,
Respondent-Public Employer in Case No. C98 K-239,

-and-

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 25,
Respondent-Labor Organization in Case No. CU98 K-60,

-and-

ROSA BLAIR,
An Individual Charging Party.
_____/

APPEARANCES:

Pollard & Anderson, P.C., by Robert Nyovich, Esq., for the Public Employer

Miller Cohen, P.C., by Bruce A. Miller, Esq., for the Labor Organization

Rosa Blair, *In Pro Per*

DECISION AND ORDER

On September 28, 1999, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondents did not violate Section 10 of the Public Employment Relations Act (PERA), 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. Pursuant to Rule 66, R423.466 of the General Rules of the Employment Relations Commission, exceptions to the Decision and Recommended Order were due on October 21, 1999. On that date, Charging Party made a request for a one-month extension of time in which to file her exceptions. We granted the request and issued an order extending the time for filing exceptions to the Administrative Law Judge's decision to November 22, 1999.

No exceptions were filed on or before the specified date. Rather, we received Charging Party's exceptions on November 23, 1999. Although the envelope in which the exceptions were mailed was postmarked on November 22, 1999, it is well-established that the date of filing of exceptions is the date the document is received, not the date posted. See e.g. *City of Detroit (Finance Department, Income Tax Division)*, 1999 MERC Lab Op ___; *Battle Creek Police Dep't*, 1998 MERC Lab Op 684, 686; *Frenchtown Charter Township*, 1998 MERC Lab Op 106, 110, affirmed ___ Mich App ___ , unpublished opinion of the Court of Appeals, issued November 16, 1999 (Docket No. 214020). Moreover, our order granting the one-month extension explicitly stated that the exceptions "must be *received* at a Commission office by the close of business" on the specified date (emphasis supplied). Accordingly, we hereby adopt the recommended order of the Administrative Law Judge as our final order and dismiss the charges and complaint.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Date: _____

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APPEARANCES:

For Public Employer: Pollard & Anderson, P.C.
By Robert Nyovich, Esq.

For Labor Organization: Miller Cohen, P.C.
By Bruce A. Miller, Esq.

For Charging Party: Rosa Blair, 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 *et seq.*, MSA 17.455(10) *et seq*., this case was heard in Detroit, Michigan on March 12, 1999, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC). The proceedings were based upon November 24, 1998, unfair labor practice charges filed by the Charging Party, Rosa Blair, against Respondents Mt. Clemens Public Schools, and American Federation of State, County and Municipal Employees, Council 25. Based upon the record, and post-hearing briefs filed by Respondents by June 24, 1999, I make the following findings of fact and conclusions of law, and issue a recommended order pursuant to Section 16(b) of PERA:

The Unfair Labor Practice Charges:

Charging Party's November 24, 1998, charge against the Employer alleged it violated the

Union contract when she was laid on September 29, 1997 and July 8, 1998. Her charge against the Union alleged that it breached its duty of fair representation by declining to process her grievances challenging her layoffs.

Finding of Facts:

In approximately 1980 Charging Party Rosa Blair began working for Respondent Employer as a substitute, non-bargaining unit employee. In 1990, when she was hired as a kitchen helper, she became a member of Respondent Union's bargaining unit. In 1997, the Employer privatized its food service department and Charging Party's position was eliminated. Thereafter, she was employed as a five-hour per day latchkey childcare worker.

In July 1998, the Employer privatized its childcare service and individuals holding those positions, including Charging Party, were laid off. Thereafter, Charging Party was given the opportunity to take a reading test to qualify for a hall monitor position. She was tutored by Respondent Union president Ida McGarrity in an effort to pass the test. Charging Party, however, failed the test and the position was awarded to an employee who had held the position until 1997, when she was bumped by a more senior laid off food service worker.[1]

In July, 1998, the local union president filed a group grievance challenging the Employer's right to subcontract. After the Employer denied the grievance, the president submitted it to Respondent Union for arbitration. Respondent Union refused to arbitrate the grievance since the Employer and the Union, pursuant to MCL 423.215(3) and (4), were prohibited from bargaining over the Employer's decision to contract with a third party for non-instructional support services.[2]

Charging Party submitted a grievance to the Employer in September 1998, alleging that her layoff violated the layoff and subcontracting provisions of the collective bargaining agreement. In late September, the Employer informed Charging Party that her grievance had not been properly submitted because, under the contract, only a Union official can submit a grievance. Thereafter, Charging Party asked the Union president to file a grievance on her behalf. Charging Party was informed that a group grievance had been filed and the Union had refused to process it to arbitration because of the passage of P. A. 112 of 1994. The unfair labor practice charge followed.

Conclusions of Law:

To establish a breach of the duty of fair representation, it must be demonstrated that the Union

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[1]Article X.C.3 of the parties collective bargaining agreement provides that: (1) laid off employees may exercise their total district-wide seniority to bump into an equal or lower classification for which they are qualified, and (2) the Employer determines qualifications for positions.

[2]Although the parties' contract which expired June 30, 1997, contained a provision prohibiting subcontacting which results in the reduction of employees' work week or in layoffs, the above provision was included in P.A. 112, enacted March 30, 1995. The Act's constitutionality was upheld in 1996.

acted in a manner which was arbitrary, discriminatory, or in bath faith. *Vaca* v *Sipes,* 386 U.S. 171 (1967); *Goolsby v City of Detroit,* 419 Mich 651, 679 (1984); *Harbor Springs Schools,* 1996 MERC Lab Op 462. Unions are vested with considerable discretion which permit them to weigh the burden upon the contractual machinery, the amount at stake, the likelihood of success, the cost, even the desirability of winning the award, against those considerations which affect the membership as a whole. *Lowe v Hotel Employees,* 389 Mich 123 (1979).

Charging Party alleges that the Union violated its duty of fair representation by refusing to sign a grievance over her discharge in June and September 1998. There is nothing on the record, however, which establishes that the Union acted arbitrary, discriminatory, or in bad faith when its local president refused to process her individual grievance concerning her layoff. The record shows that the Union acted to protect Charging Party and other similarly situated employees from the effects of the Employer's decision to privatize its child care services by filling a group grievance. Charging Party presented no evidence that Respondent Union's decision not to arbitrate the group grievance was in bad faith or discriminatory. More, with the passage of Act 112, the Employer had the sole discretion and authority to subcontract the childcare component of its workforce.

In her charge against the Employer, Charging Party only alleges that the contract was violated. Since there is no allegation that the Employer engaged in any activities that violated PERA, Charging Party has failed to state a claim. *East Jackson Public School Dist,* 1991 MERC Lab Op 132, 142. Contract disputes must be resolved through the grievance procedure set forth in the contract and do not fall within the Commission's jurisdiction. *City of Detroit, Dept. of Transportation,* 1990 MERC Lab Op 195, 199.

Based on the above discussion, I recommend that the Commission issue the order set forth below:

Recommended Order

The unfair labor practice charges are hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:_____