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

In the Matter of:

TEAMSTERS STATE, COUNTY AND MUNICIPAL WORKERS, LOCAL 214,
Respondent-Labor Organization,

Case No. CU99 F-24

-and-

ANNIE OWENS-ASBELL,
An Individual Charging Party.
/

APPEARANCES:

James Harris for the Labor Organization

Annie Owens-Asbell, In Pro Per

## DECISION AND ORDER

On May 31, 2000, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent 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.

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

Maris Stella Swift, Commission Chair

Harry W. Bishop, Commission Member

C. Barry Ott, Commission Member

Dated: _____

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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, MSA 17.455(10) *et seq.*, this case was heard in Detroit, Michigan on November 9, 1999, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. The proceedings were based upon an unfair labor practice charge filed by the Charging Party Annie Owens-Asbell against Teamsters State, County and Municipal Workers, Local 214 (the "Union") on June 3, 1999. Based upon the record, and briefs filed by November 22, 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 Charge:

In her June 3, 1999 charge, Charging Party Annie Owens-Asbell claims that Respondent violated PERA by engaging in the following conduct:

> Teamsters Local #214 withheld their representation during plaintiff demotion. Representative occurred after move was made. Refuse to use force in seeking proper hearing.

In an October 6, 1999, amended charge, Charging Party claims that after learning that she contacted this officer, the Union sent her a registered letter advising her that they would no longer fight her case.

Findings of Fact:

Annie Owens-Asbell, a member of Teamsters, Local 214, has been employed by the Detroit Board of Education for twenty-nine years. The Union and the Employer are parties to a collective bargaining agreement. In 1985, she was assigned to the Board's Department of Public Safety as a security officer II.

In 1997, Charging Party attended the Employer's Employee Assistance Program (EAP) and was on an approved absence from October 8, 1997 until April 27, 1998. Within two hours after receiving approval to return to work, Charging Party was accused by a school principal of "showing her a weapon." In June or July 1998, Charging Party was acquitted of criminal proceedings associated with the weapon

incident. She was again placed on a second approved leave, from July 24, 1998 until November 10, 1998. When she returned to work in November 1998, she was involuntarily transferred from her security officer position to a custodian position at a pay cut of $11,864 per year.

On November 24, 1998, the Union filed a grievance on Charging Party's behalf which alleged that the Employer violated the contract by the following conduct:

> . . . The employee Annie Owens-Asbell was transferred at the discretion of the General Superintendent from the department of public safety to housekeeping for the good of the service, November 9, 1998. Annie Owens-Asbell's rate of pay was changed to that of housekeeping employees. This violates the aforementioned provision of the contract and Annie Owens-Asbell is entitled to the rate of pay for a security officer II pay rate.

By November 30, the grievance had been advanced to the fifth step of the process. In a December 7, 1998 letter to Union vice president John Harris, the Employer requested that Charging Party sign a Client Information Release Authorization because "her reclassification occurred as a result of confidential information on file" which could not be released without her consent. On January 12, 1999, the Union sent Charging Party the following letter:

> This is to inform you that the DPS Board has responded to your grievance and they need additional information. In order to further investigate your grievance, they need you to sign a client information release authorization form if you consent.

During a March 5, 1999 meeting between the Union, Charging Party and the Employer, the Employer advised the Union that it could not provide the relief requested in the grievance because (1) it had no evidence of a signed release of information form; (2) Charging Party received written correspondence from Dr. Jenkins, who was responsible for her transfer; (3) Charging Party had been tested for a clerical position and did not qualify; (4) Charging Party had been previously employed as a custodian; and (5) Charging Party was aware of the circumstances that precipitated her reclassification.

In a March 29, 1999, letter to the Employer's Labor Contract Management Division, the Union enclosed a medical records and personnel file release form signed by Charging Party and requested a copy of Charging Party's personnel file and all documents related to Charging Party's workers compensation and medical leave. Thereafter, on May 19, 1999, Charging Party signed a form authorizing Henry Ford Health System to release a copy of her chest x-ray to the Employer.

In the meantime, on June 3, 1999, Charging Party filed the instant charge claiming that the Union withheld their representation during her demotion and refused to use force in seeking a proper hearing. Two months later, on August 5, Charging Party signed another medical records release form which authorized Henry Ford Health system to release information regarding her working conditions and limits to the Employer and the Union.

Thereafter, the Union's grievance panel met to consider whether to advance Charging Party's grievance to arbitration. On September 2, 1999, the panel sent the following letter to Charging Party:

> Please be advised that Local 214's Grievance Panel met for the purpose of reviewing your grievance referenced above. This grievance has been denied for the following reason(s):
>
> > According to information present to the Panel, you are not a member of our bargaining unit and, thus, have no grievance rights. However, in an attempt to help clarify your current situation, it is our understanding that after several confrontations with various employees of the school system you were sent to EAP and were paid to go through a program. At the end of the program a report was written to the school Board by the EAP basically saying that you should not be a security officer. The Board then

transferred you into a position of a maintenance person.

You were told verbally and sent at least one letter from your Business Agent notifying you that if you needed or wanted any further help from this Local Union you would have to come up with move medical information for us. We have been waiting nearly a year for this information and to date have received nothing.

Conclusions of Law:

Charging Party claims that she has been the victim of a train of abuses by the Union who violated its duty of fair representation by not fighting for her to be reinstated to her job in school security. She requests that the Union be ordered to refund all the Union dues she paid since the date of her grievance, plus any fines authorized to be levied as punitive damages.

In *Goolsby v Detroit*, 419 Mich 651 (1984), the Court stated that to satisfy its duty of fair representation, a Union must (1) serve the interests of all members without hostility or discrimination towards any; (2) exercise its discretion with complete good faith and honesty; and (3) avoid arbitrary conduct. See also *Vica v Sipes*, 386 U.S. 171 (1967). Arbitrary conduct constituting a breach of the duty amounts to behavior which reflects "reckless disregard for the rights of the individual employee." The duty of fair representation also proscribes union conduct which is inept and undertaken with little care or with indifference to the interests of those affected. *Goolsby* at 679.

The record in this case establishes that the Union did not violate its duty of fair representation. Within days after Charging Party's November 1998, involuntary transfer from her security position to housekeeping, the Union filed a grievance on her behalf. Over the next ten months, the Union made several requests for information and engaged in discussions with the Employer regarding its decision to transfer Charging Party. In August or September 1999, the Union's grievance panel met, reviewed the circumstances surrounding Charging Party's transfer, and concluded that in the absence of additional medical information, the grievance would not be advanced to arbitration.

Charging Party has failed to demonstrate that the Union's actions were arbitrary, discriminatory, or in bad faith. A union has considerable discretion to decide which grievances will be withdrawn, settled, or advanced to arbitration. *Lowe* v *Hotel & Restaurant Employees Union, Local 705*, 389 Mich 123 (1973). I recommend that the Commission issue the following order:

Recommended Order

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:_____