STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT BOARD OF EDUCATION,
Respondent-Public Employer,

-and-

DETROIT FEDERATION OF TEACHERS,
Respondent-Labor Organization,

-and-

KATHRYN JOYNER,
An Individual Charging Party in Case Nos. C98 H-156 & CU98 G-35,

-and-

DUANE E. COOK,
An Individual Charging Party in Case No. CU98 G-30,

-and-

WENDELL MINOTT,
An Individual Charging Party in Case No. CU98 G-31,

-and-

JEMOR CLARK,
An Individual Charging Party in Case No. CU98 G-33

-and-

HUBERT L. ADAMS,
An Individual Charging Party in Case No. CU98 G-34,

-and-

JANET ANSTETT,
An Individual Charging Party in Case No. CU98 G-38.

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APPEARANCES:

Gordon Anderson, Esq., for the Public Employer

Sachs, Waldman, P.C., by Eileen Nowikowski and Marshall J. Widick, Esq., for the Labor Organization

Sean Shearer, Esq., for the Charging Parties

DECISION AND ORDER

On January 31, 2001, Administrative Law Judge Roy L. Roulhac 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

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 *et seq.*, MSA 17.455(10) *et seq*., this case was heard in Detroit, Michigan on August 16, 2000, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission (MERC). The proceedings were based upon unfair labor practice charges filed by Kathryn Joyner against Respondent Detroit Board of Education and by Kathryn Joyner, Duane Cook, Hubert Adams, Wendell Minott, Jemor Clark and Jan Anstett against Respondent Detroit Federation of Teachers. Based upon the record, and post-hearing briefs filed by Respondents by November 7, 2000, 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:

The Charging Parties claim that the Union violated its duty of fair representation by failing to investigate and respond to complaints they made during a February 9, 1998, meeting about their assignments to higher work classifications without appropriate compensation. In the charge against the Detroit Board of Education, Charging Party Joyner claims that the Employer failed to make her a contract teacher although she is certified and teaches high school subjects. At the onset of the hearing, I granted Respondent Detroit Board of Education's motion to dismiss the charge against it because the charge failed to state a claim upon which relief could be granted under PERA.

Finding of Facts:

Charging Parties are certified adult education teachers employed by Respondent Detroit Board of Education. Respondent Detroit Federation of Teachers is the exclusive collective bargaining agent of teachers and other employees employed by Respondent Detroit Board of Education. Respondents have been parties to a series of collective bargaining agreements which govern the terms and conditions of employment for Board employees. The latest agreement covered the period July 1997 through June 1999.

Prior to 1996, adult education teachers worked in separate programs from teachers who taught students enrolled in kindergarten through twelfth grade (K-12) "contract" state-certified

teachers. The adult education teachers had a separate supervisory structure, were paid hourly, worked various number of hours, taught basic education courses to students working toward a general education diploma (GED), and were required to recruit students for their classes. During the 1995-1996 school years, almost all adult education teachers who lacked Michigan teaching certificates were laid off. Gradually, during the 1996-97 school year, the Charging Parties and other certified adult education teachers were recalled. On October 25, 1996, the Union filed a grievance on behalf of Charging Party Cook which alleged that his seniority and recall rights had been violated and his work hours reduced. He sought back pay and reassignment to a day position. The Employer denied the grievance at step one and step two. In January 1997, the Union filed a class action grievance on behalf of all adult education teachers who claimed their seniority and recall rights had also been violated. However, by June 1997, the Union had decided to discontinue processing both grievances.

In 1996 and 1997, some recalled adult education teachers were transferred to alternative high schools where they taught 16-19 year old students the same curriculum offered to students enrolled in the traditional K-12 program. However, they continued to be classified and paid, in accordance with the contract, as adult education teachers. Charging Parties acknowledged during the hearing that there were no provisions in the contract that required them to be paid the same rate as K-12 teachers. The Union unsuccessfully sought during bargaining for the 1997-1999 contract to include a contract provision to reclassify the alternative education teachers. In October 1997, during a special conference, the Employer informed the Union that adult education teachers' reclassification was a matter for future contract negotiations and it was unwilling to "un-negotiate" their status. The teachers, however, continued to complain. On February 28, 1998, after meeting with the teachers, a Union representative wrote to the Employer and requested another special conference to discuss the reclassification issue. The Employer refused. In July 1999, three months before the 1999-2000 successor collective bargaining agreement was ratified, the Union and the Employer executed a letter of understanding which reclassified certified adult education teachers.

Conclusions of Law:

In their post-hearing brief, the Charging Parties claim that the Respondent Union violated its duty of fair representation because it discontinued processing their pay disparity grievances. There is, however, no factual support in the record for this assertion. Neither the January 1997 class action grievance nor the October 1996 grievance filed by the Union on behalf of Charging Party Cook, addressed the pay disparity issue. Rather, both grievances dealt with the adult education teachers' seniority and recall rights. Moreover, these alleged unfair labor practices are time-barred. The six-month statute of limitations began to run in June 1997, when the Union informed the Charging Parties that their grievances would no longer be pursued. *Detroit Federation of Teachers,* 1989 MERC Lab Op 836. The charges were not filed until July and August 1998.

Further, the Charging Parties have failed to establish that the Union violated it duty of fair representation during the six-month period prior to July and August 1998, when the charges were filed, by engaging in arbitrary, discriminatory, or bad faith conduct. *Goolsby* v Detroit, 419 Mich 651, 679 (1984). Despite its unsuccessful attempt to negotiate a provision in 1997-1999 contract to reclassify the alternative education teachers or to persuade the Employer during an October 1997 special conference to reclassify them during the contract's term, the Union continued to address the adult education teachers' concerns. In February 1998, Union representatives met with the teachers, listened to their complaints, and wrote a letter which requested the Employer to schedule another special conference to consider during the 1997-1999 contract's term, reclassification of the alternative education teachers. The Employer, however, refused to reconsider its October 1997 decision. Ultimately, during the early stages of negotiations for a 1999-2000 contract, the teachers were reclassified. I conclude that these facts do not demonstrate that the Union's conduct was arbitrary, discriminatory, or in bad faith. Based on the above discussion, I recommend that the Commission issue the following order:

Recommended Order

The unfair labor practice charge filed by Charging Party Joyner against Respondent Detroit Board of Education is dismissed. Additionally, the unfair labor practice charges filed by Charging Parties Joyner, Cook, Clark, Minnot, Adams, and Anstett against Respondent Detroit Federation of Teachers are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated:_____