STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DEARBORN BOARD OF EDUCATION,
Respondent-Public Employer
Case Nos. C01 H-160, C01 H-161, C01 H-166,
C01 H-167, C01 H-168

-and-

DEARBORN FEDERATION OF SCHOOL EMPLOYEES,
LOCAL 4750,
Respondent-Labor Organization
Case Nos. CU01 H-041, CU01 H-042, CU01 H-046,
CU01 H-047, CU01 H-048

-and-

CAROLYN SAJ, ELAINE KUJANSUU, SANDRA MONDRO,
MICHELE DZINGLE and LINDA KNOWLES,
Individual Charging Parties
_____/

APPEARANCES:

C. John Holmquist, Jr., Esq., Dickinson Wright, PLLC, for the Public Employer

John E. Eaton, Esq., for the Labor Organization

Gary A. Benjamin, Esq., for the Individual Charging Parties

DECISION AND ORDER

On August 29, 2002, Administrative Law Judge Nora Lynch issued her Decision and Recommended Order in the above matter finding that Respondents 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

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 the provisions of Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, MSA 17.455 (10), this matter came on for hearing at Detroit, Michigan on March 19, 2002, before Nora Lynch, Administrative Law Judge for the Michigan Employment Relations Commission. The proceedings were based upon unfair labor practice charges filed on August 8, 2001, by Individual Charging Parties Carolyn Saj and Elaine Kujansuu, and on August 15, 2001, by Individual Charging Parties Sandra Mondro, Michele Dzingle, and Linda Knowles, alleging that the Dearborn Board of Education and the

Dearborn Federation of School Employees, Local 4750, had violated Section 10 of PERA. Based upon the record, including briefs filed on or before May 8, 2002, the undersigned makes the following findings of fact and conclusions of law and issues the following recommended order pursuant to Section 16(b) of PERA:

The Charges:

The charges were filed by five secretaries who were not included in a 2000-2001 reclassification of several employees from secretary III to secretary IV. The excluded secretaries maintain that the Employer committed an unfair labor practice by not including all secretary III positions in the upgrade. They also assert that the Union failed in its duty of fair representation by failing to inform them of the reclassification effort and by acting in an arbitrary and perfunctory manner when requested to intervene in their behalf.

Facts:

The Dearborn Federation of School Employees, Local 4750, represents a bargaining unit consisting of non-instructional employees of the Dearborn Public Schools, including secretarial/clerical employees. The latest contract between the parties covers the period of November 2000 to August 2003.

Article VII of the contract covers new classifications and reclassification and reads as follows:

1. The Employee, or the Union on behalf of an employee, may initiate a request for reclassification change.

2. These shall be acted upon by a reclassification committee which shall include a chairperson from the Human Resources Department and two (2) members from HFCC and two (2) members from P-12 appointed by the employer, and two (2) members appointed by the DFSE. The committee shall meet in May of each year to act on requests filed with the chairperson of the committee, to be effective prior to June 30.

3. Reclassification is concerned solely with investigating, reviewing, and determining than an employee is, in fact, performing the duties of one classification and being paid the rate of another classification. The committee will have no authority to change the number of hours worked per day or the number of months worked per year by an employee. When an incorrect classification of an employee is determined to exist, the reclassification committee recommends necessary correction to the Office of Human Resources.

4. The decision of the reclassification committee is not subject to the grievance procedure.

5. Application must be filed with the chairperson of the committee by January to be considered at the May meeting.

6. Any member of the committee, if necessary, may request that the employee and/or supervisor furnish additional information.

7. The employee shall be notified of the committee's decision in writing within two (2) weeks after the decision is made.

8. Changes in classification shall be submitted for approval to the Board of Education.

9. Any position which has been held by the current occupant for less than six (6) full months may not be submitted to the committee.

This article was the same in the 1997-2000 collective bargaining agreement.

Beginning in June of 1998, a number of secretary IIIs sought reclassification to secretary IV, based on changes in their workload and responsibilities. They held meetings and worked together in compiling a list of duties and responsibilities for presentation to the reclassification committee. Bruce Koldys, Union president at the time, attended their meetings, offered advice, and was supportive of their efforts. All secretary IIIs who applied in 1998 were denied reclassification. In 1999, only elementary secretaries applied for reclassification; they were also turned down by the reclassification committee.

In negotiations for the 1999-2000 contract, the Union failed in its attempt to achieve a group reclassification for the secretary IIIs but was able to negotiate a pay raise for these employees. At that time Koldys contacted Marcella Carlesimo, a secretary III, to offer congratulations due to the fact that the secretaries had been recognized by the administration with a pay rate change. According to Carlesimo, Koldys told her that they should try reclassification again, since they had received a raise but not the title.

On December 14, 2000, Carlesimo sent the following memo addressed to "All Secretary III's (Secretaries to the Principal)":

> Attached is a reclassification packet. Please fill in all necessary information and send to Human Resources by ***Thurday, December 21, 2000.*** This is once again a group effort. The pink copy must be submitted in quadruplicate.
>
> We are submitting this reclassification again per Bruce, as he feels that the administration has finally recognized our jobs are being more than a III position. He feels that this is exactly what we needed for the reclassification committee.
>
> Please call me if you have any questions, x3165.

Carlesimo testified that this memo was sent to the entire group of secretaries who had previously applied. This group included three of the Charging Parties; it did not include Linda Knowles and Sandra Mondro because they had not been part of the previous efforts due to the fact that they worked with smaller numbers of students. Carlesimo was not a Union officer or representative. According to Carlesimo, she met with three other secretaries--Pat Perna, Rose Mary Schimizzi, and Lois Mattern--to discuss strategy. They turned in the same packet of materials that had been submitted the previous years. Prior to the reclassification committee meeting in May 2001, Carlesimo and some of the secretaries met with Union representatives to decide which secretary would represent them at the reclassification committee meeting. All the secretary IIIs who applied in 2000 were granted the reclassification to secretary IV. Carlesimo testified that after the reclassification, she received calls from secretaries who had been left out. According to Carlesimo, although she regretted the fact that they had not been included, she felt that there was nothing she could do.

Union secretary Janice Piestrak has served as a Union representative on the reclassification committee for approximately ten years. She testified that she was not aware of which employees were requesting reclassification until she received a package of information from the Employer in April, prior to the May meeting. According to Piestrak, similarly situated employees often work together as a group to prepare language for reclassification requests, but file individual requests for reclassification. She also testified that not everyone files a request; some employees may have reasons for not filing, such as fearing the impact on their seniority.

Charging Party Carolyn Saj testified that she did not receive the December memo from Carlesimo and was not aware of the reclassification until June of 2001, when she returned from a medical leave. Saj called Personnel Director Karl Stuef who told her that it was regrettable but there was nothing he could do. She also contacted Gloria Finnegan, the Union president as of January 2001, who told her that it was not a grievable issue. At the end of June, Saj wrote to a representative of the American Federation of Teachers (AFT), outlining what happened and asking if something could be done. He advised her to write letters to the Board and the Superintendent.

On July 2, 2001, Saj wrote to Superintendent Dr. J. Hughes regarding her situation, stating the following:

> This action [the upgrade] was initiated during the period I was out for knee replacement surgery from November 16, 2000 to January 8, 2001. I was not notified, nor did I receive the upgrade application packet. I found out about this recent attempt to upgrade on June 11, 2001. I wrote to Mr. Stuef on June 12, 2001 explaining my situation and learned that some other secretaries were also omitted from this action. Mr. Stuef indicated that "since I did not apply, I do not qualify and I will not be considered as outlined in contract language."

Saj asked Hughes to review the matter and requested that she be considered for the upgrade.

On July 6, 2001, Human Resources Supervisor Thomas D. Rafferty responded on behalf of Dr. Hughes, denying her request on the following grounds:

1. Reclassification is governed by the DFSE contract Article VII. To offer you special dispensation allowing you to qualify for reclassification without having filed prior to January 1, 2001 would constitute negotiating a subject of bargaining with you individually as opposed to bargaining with your union. This is clearly a violation of Article I of the contract and therefore not permissible.

2. The fact that you did not find out about the reclassification applications filed by several of your fellow union members until June 11, 2001 is irrelevant to whether or not you filed for reclassification. The contract language does not preclude you from filing a reclassification application at any time prior to January of the year in which the May meeting to consider reclassification requests is to be held. Although a large number of union employees in your same classification were apparently notified and received an upgrade application packet for reclassification, there was no managerial notification in regard to this action. That you and others were omitted from this action was unfortunate but not under the control of management. As such management cannot take responsibility for your omission.

3. The reclassification of the Secretary III employees on June 12, 2001 was conducted in compliance with the provisions of Article VII of the DFSE contract. Only employees that applied for reclassification prior to January 2001 were considered for reclassification at the May 2001 reclassification meetings.

4. You have indicated that you believe you are entitled to reclassification based on changes that have occurred in your position as Secretary III at Howe Trainable Center. Accordingly, please be advised that you may exercise your union rights regarding reclassification in compliance with Article VII of the DFSE contract by submitting an application for reclassification prior to January 2002 for consideration at the May 2002 reclassification meeting.

Saj received a similar answer from the President of the Board of Education. She also contacted a representative of the AFT who informed Saj that her problem was one which had to be handled by the local union. In August, Saj and four other secretary IIIs omitted from the reclassification filed the instant unfair labor practice charges.

Discussion and Conclusions:

At the close of Charging Parties' proofs at hearing, the Employer renewed the motion to dismiss which it made prior to the hearing, on the grounds that the charges were untimely and failed to state a cause of action. The Union also moved to dismiss on the basis that no violation of the duty of fair representation had been established by Charging Parties. As no conduct which would constitute a violation of PERA by the Employer was charged or proven, the Employer's motion to dismiss was granted by the undersigned. Respondent Union's motion was taken under advisement.

The Charging Parties maintain that the Union failed in its duty to represent them by not ensuring that they were included in the reclassification effort, and by refusing to file a grievance after they learned of their exclusion. According to Charging Parties, the Union acted arbitrarily, with little concern for the rights of its members. Respondent Union asserts that the Union did not have a duty to solicit reclassification applications from Charging Parties. In addition, the Union argues that its reason for not filing a grievance was based upon a reasonable interpretation of the contract, an interpretation shared by the Employer.

The Commission has found that a union's duty of fair representation under PERA consists of three distinct responsibilities: 1) to serve the interests of all members without hostility or discrimination toward any; 2) to exercise its discretion in good faith and honesty; and 3) to avoid arbitrary conduct. *Eaton Rapids Ed Assoc,* 2001 MERC Lab Op 131; *Goolsby v Detroit,* 419 Mich 651, 679 (1984); *Vaca v Sipes,* 386 US 171 (1967). As discussed below, I find that Charging Parties have not met their burden of demonstrating that the Union breached these standards in any way.

The record reflects that the Union attempted a group reclassification for secretary IIIs at the bargaining table which failed, although they were able to negotiate a wage increase for these employees. Thereafter the Union president suggested to Carlesimo, one of the secretary IIIs, that they might again try for reclassification under the contractual procedures. Carlesimo then sent a memo to the secretary IIIs, reminding them to send their materials to Human Resources before the December deadline. Unfortunately, certain secretaries did not receive this reminder. Carlesimo was not a Union officer or representative and was not acting on behalf of the Union. In preparing her application, she worked with three other secretaries and not the entire group of secretary IIIs. Although Union representatives may have reviewed materials to be submitted in the past and encouraged employees in their reclassification efforts, there is no question that under the contract each employee is individually responsible for submitting their own reclassification application. I find that the Union had no duty to solicit reclassification applications from employees or ensure that all employees submitted applications. As testified to by the Union secretary, certain employees may have had personal reasons for not pursuing a higher classification, such as concern with loss of seniority.

With respect to the Union's failure to file a grievance, it is well established that as long as a union is acting in good faith, it has considerable discretion to decide whether to proceed with a grievance. *Lowe v Hotel Employees,* 389 Mich 124, 146 (1973); *Intl Alliance of Theatrical Stage*

Employees Local 274, 2001 MERC Lab Op 1. Where a union and an employer agree as to the construction of their contract, this interpretation is entitled to great deference. *Detroit Assoc of Educational Office Employees, AFT, Local 4168,* 1997 MERC Lab Op 475,480; *Teamsters Local 214,* 1996 MERC Lab Op 525; *City of Detroit (Wastewater Treatment Plant),*1993 MERC Lab Op 716. Under the circumstances of this case, where the Employer and Union agreed that under Article VII, reclassification disputes were exempt from the grievance procedure, the Union's refusal to process a grievance was justified.

I conclude that Charging Parties have not established that the Union acted arbitrarily or otherwise breached its duty of fair representation by not soliciting reclassification applications or by declining to file grievances on their behalf. It is therefore recommended that the Respondents' motions to dismiss be granted and that the Commission issue the following order:

RECOMMENDED ORDER

It is hereby ordered that the charges are dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nora Lynch
Administrative Law Judge

DATED: _____