STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent – Labor Organization,

Case No. C03 F-138

-and-

LaSHUNDA R. HUFFMAN,
An Individual Charging Party.

_____/

APPEARANCES:

Gordon J. Anderson, Esq., for the Public Employer

Jessie L. Huffman, for the Charging Party

DECISION AND ORDER

On June 30, 2004, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above matter finding that Respondent has not engaged in and was 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 fromthe 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

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Nora Lynch, Commission Chairman

_____
Harry W. Bishop, Commission Member

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Nino E. Green, 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 and 216, Roy L. Roulhac, Administrative Law Judge for the Michigan Employment Relations Commission, heard his case in Detroit, Michigan on March 23, 2004. Based upon the record and post-hearing briefs filed by May 26, 2004, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charge:

On June 25, 2003, Charging Party filed an unfair labor practice charge against Respondent Detroit Public Schools. The charge reads:

> The Detroit Board of Education managers, Mr. Woolridge and Ms. Langford [the sub office supervisor] violated the charging party's *Weingarten* rights by not getting her a union steward when she requested a union steward. The charging party told the managers that she feels that she is going to receive disciplinary action from this meeting. The charging party belongs to or works in a unionized facility.

On November 18, 2003, Respondent filed an answer and a motion for summary disposition. Respondent alleged that Charging Party had no rights under *NLRB v Weingarten, Inc*, 420 US 251 (1975) because a union did not represent Charging Party in her substitute custodian position. On March 2, 2004, I denied Respondent's motion since the Commission has long held that, under PERA, un-represented employees have the

right to seek the assistance of another employee at an investigatory interview that they reasonably fear might lead to discipline, although they do not have the right to be represented by a non-employee. See *Univ of Michigan*, 1977 MERC Lab Op 496; *Detroit Bd of Educ*, 1982 MERC Lab Op 593, 604; *Univ of Michigan*, 1990 MERC Lab Op 272, 294. See also *Epilepsy Foundation of NE Ohio* v *NLRB*, 331 NLRB 676, 679 (2000), (enf'd in relevant part), 268 F3d 1095 (DC 2001).

Findings of Fact:

Respondent employs Charging Party as a substitute custodian, a non-union position. On May 6, 2003, Charging Party left a knife on her janitorial cart that a student found the next day. On May 22, 2004, Respondent sent Charging Party a memo advising her that her carelessness in leaving the knife on the cart violated several board rules, endangered students, staff and anyone else in the building and that disciplinary steps would be taken.

On May 27, 2004, Charging Party was called to a meeting with east side sub manager Spencer Woolridge, Jr. and the sub office supervisor. The parties disagree about what occurred during the meeting. According to Charging Party, when the meeting began, she asked for "Local 345 to represent me, or union representation or someone to represent me." Charging Party testified that the sub office supervisor wanted to call Local 345, but Woolridge told her to put the phone down because Huffman was not in a union. Charging Party testified that she told Woolridge that if Local 345 could not represent her, her father, who is employed by Respondent as a substitute teacher, was available. According to Charging Party, Wooldridge told her that she did not need representation.

Woolridge testified that Charging Party did not request that someone from the union be present to represent her and did not mention that her father was available to represent her. After the meeting, Woolridge told Charging Party that she would not be working until a decision was made whether to discipline her. Although Woodridge testified that he had no authority to discipline employees, Charging Party did not work from May 27 to August 10, 2003.

Conclusions of Law:

Charging Party claims that she asked for representation at an interview that she reasonably believed might lead to discipline and Woolridge and the sub office supervisor denied her request. Therefore, according to Charging Party, she should be made whole for all lost time, pay, benefits and promotions that she missed between May 27 and August 10, 2003.

I find that Charging Party's testimony that she asked for representation at her investigatory interview is no more credible than Woolridge's claim that she did not. Charging Party failed to call the sub office supervisor as a witness to support her version of what occurred during the interview. Moreover, Charging Party's testimony that she asked Woolridge to allow another employee, her father, to represent her is not mentioned

in her charge where she states that "Mr. Woolridge and Ms. Langford violated her *Weingarten* rights by not getting her a union steward when she requested a union steward."

I find that Charging Party has not established by a preponderance of the evidence that Respondent violated Section 10(1)(a) of PERA. I, therefore, recommend that the Commission issue the order set forth below:

Recommended Order

The unfair labor practice charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: _____