STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. C01 K-228

-and-

ORGANIZATION OF SCHOOL ADMINISTRATORS
AND SUPERVISORS,
Charging Party-Labor Organization.
____/

APPEARANCES:

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

Mark H. Cousens, Esq., for the Labor Organization

DECISION AND ORDER

On October 15, 2002, Administrative Law Judge Roy L. Roulhac issued his Decision and Recommended Order in the above-entitled matter, finding that Respondent has engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist and take certain affirmative action as set forth in the attached Decision and Recommended Order of the Administrative Law Judge.

The Decision and Recommended Order of the Administrative Law Judge was served on the interested parties in accord with Section 16 of Act 336 of the Public Acts of 1947, as amended.

The parties have had an opportunity to review this Decision and Recommended Order for a period of at least 20 days from the date the decision was served on the parties, and no exceptions have been filed by any of the parties to this proceeding.

ORDER

Pursuant to Section 16 of the Act, the Commission adopts as its order the order recommended by the Administrative Law Judge.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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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*., this case was heard in Detroit, Michigan on September 24, 2002, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission. This proceeding was based upon an unfair labor practice charge filed on November 13, 2001, by the Organization of School Administrators and Supervisors against the Detroit Public Schools. Based upon the record and post-hearing briefs filed by May 8, 2002, I make the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA:

The Unfair Labor Practice Charge:

In its November 13, 2001 charge, Charging Party claims that despite its demand to bargain over wage rates to be assigned to positions added to its bargaining unit, Respondent implemented wage increases for several members without bargaining and absent impasse. Respondent filed an answer on March 6, 2002.

Findings of Fact:

Charging Party is the bargaining agent for a unit consisting of five field supervisors, a program associate, and a program supervisor employed by Respondent in its security department. Field supervisors work in the field and are responsible for supervising, evaluating, and monitoring public safety officers. The program associate and program supervisor work in offices and are paid more than field supervisors. Since 1998, the parties have discussed increasing the field supervisors' pay.

In the fall of 2001, Respondent proposed, as part of a security department reorganization, to add a deputy chief and increase the number of program associates and program supervisors. Charging Party responded by indicating its interest in knowing how the appointment of program associates and program supervisors would affect the field supervisors' terms and conditions of employment and whether the new employees' job responsibilities would be the same as the field supervisors. Charging Party suggested that if the new employees would be performing the same duties as the field supervisors, they should all be paid at the same rate and share the same title. Although the parties scheduled a meeting to continue their discussion, on the same date that Respondent presented it plan to Charging Party, Respondent appointed two employees to the program associate and program supervisor classifications. However, the employees perform the same duties as field supervisors but are paid at the higher rate set forth in the parties' collective bargaining agreement for program associates and supervisors. Respondent has not responded to Charging Party's request to resume discussions.

Conclusions of Law:

The Commission has consistently held that certain types of decisions, such as the creation of new positions, are within the scope of an employer's inherent managerial right, although an employer must bargain over the impact of its decision on the unit. *City of Hamtramck*, 1995 MERC Lab Op 1123. Charging Party claims that Respondent violated Section 10(1)(e) of PERA by refusing its demand to bargain over the job titles and pay rates of new employees who are performing the same work as field supervisors. Respondent asserts that Charging Party provided no evidence that it made a demand to bargain over the impact of adding positions to the bargaining unit.

The record does not support Respondent's assertions. Diane Woodard, Charging Party's witness testified that when Respondent proposed to add positions to the bargaining unit, the Union expressed its interest in knowing how the appointments would impact the field supervisors' terms and condition of employment. However, on the same date the plan was proposed to Charging Party, Respondent appointed a new program associate and a new program supervisor although a meeting had been scheduled to further discuss the employees' job titles and pay rates. Respondent offered nothing to rebut this testimony. I, therefore, conclude that Charging Party gave sufficient notice of its desire to bargain over the impact of Respondent's proposal to expand the number of bargaining unit employees by informing Respondent of its interest in discussing the additional employees' job titles and pay rates and scheduling a meeting for further discuss the Respondent's proposal.

Respondent also contends that Charging Party presented no evidence of the duties and responsibilities of field supervisors. Contrary to this assertion, Woodard testified that field supervisors supervise, evaluate, and monitor public safety officers' job performance and the newly appointed program associate and program supervisor perform the same duties, but are paid more. Respondent offered no evidence to refute her testimony and offered no evidence as part of its case-in-chief. Clearly, Respondent's unilateral decision to grant higher classifications and wages to new employees negatively impacts the bargaining unit and the working conditions of existing field supervisors in violation of Section 10(1)(e) of PERA. *City of Hamtramck, supra; City of Warren,* 1988 MERC Lab Op 761. I therefore, recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

The Detroit Public Schools, its officers and agents are hereby ordered to:

1. Cease and desist from unilaterally altering terms and conditions of employment of employees in the bargaining unit represented by the Organization of School Administrators and Supervisors.

2. Upon demand, bargain over the appointment, pay rate and titles of new bargaining unit positions.

3. Post, for thirty consecutive days, copies of the attached notice to employees in conspicuous places, including all locations where notices to employees are customarily posted.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Roy L. Roulhac
Administrative Law Judge

Dated: ____________

NOTICE TO EMPLOYEES

PURSUANT TO AN ORDER OF THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION AFTER A PUBLIC HEARING IN WHICH IT WAS FOUND THAT THE DETROIT PUBLIC SCHOOLS COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL cease and desist from unilaterally altering terms and conditions of employment of employees in the bargaining unit represented by the Organization of School Administrators and Supervisors and bargain over the pay rates and titles of new bargaining unit positions.

DETROIT PUBLIC SCHOOLS

By ____

Dated: __________

(This notice shall remain posted for a period of thirty consecutive days and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P. O. Box 02988, Detroit, MI 48202-2988, (313) 456-3510).