STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

DETROIT PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. C02 C-074

-and-

AMERICAN FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES, COUNCIL 25
Charging Party-Labor Organization.
_____/

APPEARANCES:

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

Miller Cohen, P.L.C., by Eric I. Frankie, Esq., for the Labor Organization

DECISION AND ORDER

On June11, 2003, 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

_____
Nora Lynch, Commission Chair

_____
Maris Stella Swift, Commission Member

_____
Harry W. Bishop, Commission Member

Dated: _____

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

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DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE

This case was heard in Detroit, Michigan on July 24, 2002, by Administrative Law Judge Roy L. Roulhac for the Michigan Employment Relations Commission pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 *et seq*. The proceeding was based upon an unfair labor practice charge filed on March 28, 2002, by Charging Party American Federation of State, County, and Municipal Employees Council 25 (AFSCME), a labor organization, against Respondent Detroit Public Schools, a public employer. Based upon the record and post-hearing briefs filed by October 23, 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 June 12, 2002 charge, as amended, Charging Party claims that in February 2002, without notice and/or bargaining, Respondent unilaterally removed approximately one hundred forty bargaining unit members from their classifications and placed them into non-union positions and changed their terms and conditions of employment. Charging Party also contends that Respondent laid off former AFSCME Local 345 vice-president Huey Moore because of his union activities.

Findings of Fact:

A. Reclassification of Assistant Custodians

The facts are essentially undisputed. Charging Party and Respondent were parties to a collective bargaining agreement that expired on December 31, 1999. Charging Party represents a bargaining unit which includes a number of classifications, including approximately nine hundred assistant custodians. They are responsible for the upkeep and maintenance of school facilities.

In December 2001 and January 2002, Respondent's chief executive met with the exclusive bargaining representatives of all school employees and advised them that because of economic conditions there might be a need for layoffs. However, on January 9 and January 29, 2002, without prior notice to the Union, Respondent sent letters (with copies to the Union) to between 146 and 200 assistant custodians informing them that on February 8, 2002, they would be reclassified from assistant custodians to regular emergency substitutes.1 On January 22, 2002, Charging Party sent a letter to Respondent demanding to bargain over the change in the employees' classifications and requesting that the status quo be maintained until bargaining was concluded. Respondent did not respond to Charging Party's letter or to oral and written requests made after the January 29 reclassifications.

As a result of the assistant custodian's reclassification, they were removed from Local 345's bargaining unit and suffered a loss of pay and benefits. As of the date of the hearings, most of the affected employees had been returned to their assistant custodian classifications.

B. Huey Moore's Layoff

Respondent hired Huey Moore in 1979 as a stores clerk. During his twenty-year employment in this classification, Moore was a member of Local 345 and served in a number of leadership roles including, steward, chief steward, vice president, and executive vice president.

In 1999, Moore left Local 345's bargaining unit when he was promoted to a stores keeper position, a supervisory classification that is represented by the Detroit Association of Education Office Employees, Local 4168, an AFSCME Council 25 affiliate. On January 19, 2002, Moore was laid off from his stores keeper position. Local 345, Moore's former bargaining representative asked Respondent to allow Moore to transfer back into a stores clerk position in Local 345.2 According to Local 345's president Percy Jackson, he was told in an "off-the-record" conversation with Henry Williams, the associate director of labor relations, that Respondent was not inclined to allow Moore to return to a stores clerk position because "they really didn't care

1 The letter reads: "As a result of the reorganization and economic necessity of the school district, it has been determined that you will be reclassified from an Assistant Custodian to a Regular Emergency Substitute Custodian. This communication is your official notice of reclassification from an Assistant Custodian to a Regular Emergency Substitute Custodian assigned to the Facilities Maintenance Department effective the end of the day, February 8, 2002." According to the Union, some employees were reclassified to emergency substitute positions.

2 Article XX of the parties' collective bargaining agreement permits employees who are transferred or promoted to a position not included in the bargaining unit to transfer back into a bargaining unit position with full seniority rights and benefits.

for his activities when he was working as [Local 345's] executive vice president, and that they didn't want him back."

At about the same time that Moore was laid off from his stores keeper position, five or six stores clerks were also laid off. According to Respondent's witness Barbara Nelson, a placement personnel manager, Moore was not permitted to transfer to a stores clerk position in Local 345 because stores clerks had been laid off and there were no vacant stores clerk positions.

Conclusions of Law:

Charging Party's first claim is that Respondent committed an unfair labor practice by reclassifying assistant custodians into non-union positions without prior notice and ignored its demands to bargain. Respondent, on the other hand, contends that there is no evidence of its failure to meet and confer in good faith with the Union. According to Respondent, neither the parties' agreement nor applicable law prohibit an employer from offering alternative employment to individuals who are laid off, and Charging Party had no right to notice or opportunity to bargain about who is offered employment.

I find no merit to Respondent's argument. Section 15 of PERA requires a public employer to bargain collectively with its employees' representatives and confer in good faith with respect to wages, hours, and other terms and conditions of employment. An employer's bargaining duty is conditioned upon a request for bargaining from the bargaining agent. *Local 58, SEIU* v Village of Union City, 135 Mich App 553, 558 (1984). In this case, the undisputed facts disclose that Respondent failed to respond to Charging Party's requests to bargain over the change in their terms and conditions of employment. As such, Respondent violated its duty to bargain in violation of Section 15 of PERA.

Charging Party also claims that Respondent discriminated against Huey Moore in violation of PERA by refusing to transfer Moore back into Local 345's bargaining unit as a stores clerk. To establish a prima facie case of discrimination under Section 10 of PERA, a party must show: (1) employee, union, or other protected activity; (2) employer knowledge of that activity; (3) union animus or hostility toward the employee's protected rights; and (4) suspicious timing or other evidence that protected activity was a motivating cause of the alleged discriminatory actions. *City of Detroit*, 1992 MERC Lab Op 597.

I find that the Union failed to show that union animus or other protected activity was a motivating factor in Respondent's refusal to transfer Moore into a stores clerk position. I credit the testimony of Respondent's witness Barbara Nelson that there were no vacant position for Moore to transfer into since five or six stores clerks had been laid. Respondent, therefore, did not violate PERA by not transferring Moore to a stores clerk position.

Based on the above findings of fact and conclusions of law, I recommend that the Commission issue the order set forth below:

RECOMMENDED ORDER

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

1. Cease and desist from:

    a. Failing or refusing to bargain in good faith with AFSCME Council 25 by refusing requests to bargain over the reclassification of assistant custodians.

    b. Interfering with, restraining, or coercing employees in the exercise of their rights under PERA by the actions described above or in any like or related manner.

2. Take the following affirmative action to effectuate the policies of the Act:

    a. On request, bargain in good faith with AFSCME Council 25 over wages, hours, and working conditions of assistant custodians.

    b. Make assistant custodians whole for any loss of pay or benefits they may have suffered as a result of their reclassification.

    c. Post the attached notice to employees in conspicuous places on Respondent's premises, including all locations where notices to employees are customarily posted, for a period of 30 consecutive days.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Roy L. Roulhac
Administrative Law Judge

Dated: _____

NOTICE TO EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, the DETROIT PUBLIC SCHOOLS, a public employer under the Michigan Employment Relations Act, has been found to have committed an unfair labor practice in violation of this Act. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

WE WILL NOT fail or refuse, upon request, to bargain in good faith with the American Federation of State, County, and Municipal Employees, the collective bargaining agent of our employees, over the wages, hours, and terms and conditions of employment related to the reclassification of assistant custodians.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of their rights under PERA by the actions described above or in any like or related manner.

ALL of our employees are free to engage in lawful activity for the purpose of collective bargaining or other mutual aid and protection as provided in Section 9 of the Public Employment Relations Act.

DETROIT PUBLIC SCHOOLS

By _____

Title _____

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).