STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

MONA SHORES PUBLIC SCHOOLS,
Respondent-Public Employer,

Case No. C00 D-63

-and-

MONA SHORES TEACHERS EDUCATION ASSOCIATION, MEA-NEA,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Craig A. Mutch, Esq., for the Respondent

William F. Young, Esq., for the Charging Party

DECISION AND ORDER

On December 28, 2001, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216. The ALJ recommended that the charge be dismissed. On February 14, 2002, Charging Party, Mona Shores Teachers Education Association, MEA-NEA, filed timely exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. On March 11, 2002, Respondent filed a timely brief in support of the Decision and Recommended Order of the ALJ.

On March 7, 2002, the Commission received a letter from Charging Party requesting that the charge be withdrawn. Charging Party's request is approved. The ALJ's order dismissing the charge will be published in accordance with Commission policy.

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 and 423.216, this case was heard at Lansing, Michigan on August 3, 2001, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. Based upon the entire record, including post-hearing briefs filed by the parties on or before September 7, 2001, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

The Mona Shores Teachers Education Association, MEA/NEA, filed this charge against the Mona Shores Public Schools on April 17, 2000. Charging Party represents a bargaining unit of teachers employed by the Respondent. The charge alleges that Respondent violated its duty to bargain in good faith when, on or about January 19, 2000, Respondent announced that teachers would no longer be allowed to keep live animals in their classrooms. Charging Party asserts that this constituted a unilateral change in an existing policy. The charge also alleges that on or about February 14, 2000, Respondent unlawfully refused Charging Party's demand to bargain over this

issue.

Facts:

In July 1996, shortly after it had remodeled all of its classrooms, Respondent promulgated a written policy entitled "Faculty Responsibilities in Newly-Remodeled Classrooms." The policy dealt generally with keeping the new classrooms clean and avoiding substances that might damage the new carpets or walls. Included was the following paragraph:

> 7. Animals or birds in carpeted areas must be kept in cages designed to eliminate "litter." Limit of two (2) cages per room except in Science Labs is expected.

Charging Party raised no objection to the "Faculty Conduct in Newly-Remodeled Classrooms" document because it believed that the policy, including paragraph seven, was fair and reasonable. However, an elementary school teacher who kept a number of birds in her classroom was unhappy with the policy. Charging Party's grievance chairman became involved in extended discussions with the teacher, her building principal, the assistant superintendent, and Respondent's maintenance supervisor over this teacher's birds. These discussions resulted in Respondent agreeing to permit the teacher to keep more birds than the policy allowed, while setting strict rules for their handling.

In late July 1999, the new principal of this teacher's school telephoned the medical director of the Mid-Michigan District Health Department to inquire about possible health hazards from the teacher's birds. On July 28 the medical director wrote the principal a letter describing several diseases that could be transmitted to humans by birds. The letter stated, "It is my opinion that the presence of bird feces in any amount constitutes a real and immediate health threat to your pupils both in the classroom and to the rest of the pupils in the building." The medical director recommended that birds of all species be banned from the building. In late August 1999, the new principal and the assistant superintendent put additional restrictions on the number of birds the teacher could keep in her room, and required her to obtain approval from the principal before taking the birds out of their cages for instructional purposes. The teacher complained to Charging Party, and its grievance chairperson again became involved in discussions with the administration over "the bird issue." As an outgrowth of these discussions, the assistant superintendent contacted the Muskegon County Health Department. The medical director of this department replied by letter dated November 17, 1999. He discussed some diseases that could be caused by birds, and confirmed that the risk of illness increased with the number of birds in the building. The medical director did not discuss specific risks posed by other animals, but his letter concluded, "It is my recommendation that any live animals, including birds, not be kept in school classrooms."

At its regular meeting on December 6, 1999, the Board voted unanimously to ban all birds from classrooms. Another motion was raised, and the Board voted to ban all live animals from classrooms. This ban extended to science labs as well as ordinary classrooms.

On January 19, 2000, Respondent issued a revised version of the "Faculty Responsibilities Regarding District Classrooms" policy. The only significant change in the revised policy was the following:

> No animals or birds are allowed in classrooms. Upon receiving prior requests, principals may approve unique instructional activities involving animals and/or birds (John Ball Zoo Presentations, Gillette Nature Center Presentations, etc.) when all safety considerations are met.

On January 28, 2000, Charging Party wrote a letter asserting that the policy promulgated on January 19, 2000 constituted a change in working conditions. Charging Party demanded to bargain. The superintendent replied on February 14, 2000, stating that Respondent did not view these changes as mandatory subjects of bargaining and indicating that it did not intend to negotiate with Charging Party over them.

Discussion and Conclusions of Law:

Respondent maintains, first, that its ban on live animals was not a mandatory subject of bargaining because, as a curriculum issue, it is clearly "within the educational sphere." Respondent points out that Charging Party's witness, an experienced classroom teacher, testified that interaction with live animals can and should be part of the curriculum. Respondent also argues that Charging Party waived any statutory right it may have had to bargain over the ban. Article 1600 of the parties' collective bargaining agreement, entitled "Reserved Rights of the Board of Education," states that the Employer has all "responsibilities, powers, rights and authority" vested in it by the laws and Constitution of the State of Michigan and the United States. According to Respondent, this includes Respondent's obligation to "determine the courses of study to be pursued," set out in Section 1282(1) of the School Code of 1976, MCL 380.1282. It also includes Respondent's "right, power, and duty" to provide for the safety and welfare of pupils while at school as set out in Section 380.11a of the School Code, MCL 380.11a.

Section 15(2) of PERA, added to the statute in 1994, states that a public school employer "has the responsibility, authority and right to manage and direct the operations and activities of the public schools under its control."

In addition, an educational institution has no duty to bargain over matters which "fall clearly within the educational sphere." *Central Michigan Univ Faculty Assn v Central Michigan Univ,* 404 Mich 268, 282, (1978). The issue *Central Michigan* was whether the university was required to bargain over a "teaching effectiveness program," under which students evaluated faculty members and decisions about reappointment, promotion and tenure were based in part on student evaluations. The Supreme Court drew a distinction between matters in the "educational sphere" and those in the "employment sphere, crucial to the employer-employee relationship." It held that that while an educational institution had the inherent right to make decisions on matters within the "educational sphere," the procedures and criteria used in the evaluations were within the "employment sphere," and subject to the duty to bargain, since they affected employees' retention, tenure and promotion.

Charging Party maintains that Respondent's decision to ban animals from the classroom is not "within the educational sphere" because it affects teacher safety. Charging Party relies on testimony by a teacher that the presence of live animals in the classroom may help draw out withdrawn and hostile students, particularly in special education classrooms, and create a calmer and

friendlier classroom atmosphere. This, according to the teacher, leads to better classroom control and a safer classroom for both teacher and students.

Although Respondent's ban on animals in this classroom does not alter the curriculum, in the sense of the subject matters to be taught, it does affect the way teachers may choose to teach certain subjects. For example, a teacher can no longer incorporate regular observation of an animal's living habits into a science unit on animals. However, I agree with Respondent that this is a matter clearly within the educational sphere, and therefore outside the scope of Respondent's duty to bargain both by inherent right and under the terms of the contract's "reserved rights" clause. I find no merit in Charging Party's argument that the ban presents a safety issue for employees. In *Trenton v Fire Fighters*, 166 Mich 285, 295 (1988), the Court held that while staffing is generally part of an employer's inherent managerial prerogative, an employer has a duty to bargain over issues of minimum manning when they are inextricably intertwined with safety issues. The record here indicates that there is, at best, an attenuated relationship between the presence of animals in the classroom and teacher safety. I conclude that the Charging Party has not demonstrated that Respondent's ban on animals in the classroom and employee safety is inextricably intertwined.

Charging Party also argues that the health concerns put forth by Respondent as the reason for the ban (1) have no merit, since there is no evidence that animals other than birds present a health risk, and (2), in any case, do not outweigh the employees' right to bargain over a change in working conditions. Charging Party relies on *Holland PS*, 1989 MERC Lab Op 346, in which the Commission held that a school district's policy banning smoking by employees in all the district's buildings and vehicles was a mandatory subject of bargaining, despite the district's argument that "sidestream" or second-hand smoke presented a health danger to other employees, students, and the general public.

I find *Holland* to be distinguishable. In *Holland,* the Commission held that smoking policies, like other rules governing the personal conduct of employees while on the employer's premises, have an impact on conditions of employment. While it agreed with the employer that smoking policies involve public health concerns, the Commission held that these concerns did not, on balance, outweigh the employees' interests in having a voice in the formulation of a policy that complied with existing law. However, as I noted above, Respondent's ban had a negligible impact on its teachers' conditions of employment. There is no reason for me to determine whether Respondent's health concerns justified the ban.

For reasons set forth above, I conclude that Respondent did not have a duty to bargain over its decision to ban live animals from the classroom. Based on my findings of fact, discussion and conclusions of law, I find that Respondent did not violate its duty to bargain under Section 10(1)(c) of PERA, and I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge

DATED: _____