

**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION**

In the Matter of:

BUENA VISTA SCHOOLS,
Public Employer - Respondent,

Case No. C08 D-067

-and-

JACOBA LUMBRERAS,
An Individual - Charging Party.

APPEARANCES:

Jacoba Lumbreras, *In Propria Persona*

DECISION AND ORDER

On June 30, 2008, Administrative Law Judge Doyle O'Connor 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 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

Christine A. Dardarian, Commission Chair

Nino E. Green, Commission Member

Eugene Lumberg, Commission Member

Dated: _____

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
EMPLOYMENT RELATIONS COMMISSION**

In the Matter of:

BUENA VISTA SCHOOLS,
Respondent-Public Employer,

Case No. C08 D-067

-and-

JACOBA LUMBRERAS,
Individual Charging Party.

APPEARANCES:

Jacoba Lumbreras, for Charging Party, appearing personally

DECISION AND RECOMMENDED ORDER
OF ADMINISTRATIVE LAW JUDGE
ON SUMMARY JUDGMENT

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 assigned to Doyle O'Connor, Administrative Law Judge (ALJ) of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission. This matter is being decided pursuant to an order to show cause why the charge should not be dismissed for failure to state a claim

The Unfair Labor Practice Charge:

On April 8, 2008, a charge was filed in this matter asserting that the Buena Vista School District (Employer) had violated the Act by employing substitute employees while Jacoba Lumbreras (Charging Party) was on lay-off status, allegedly in violation of the collective bargaining agreement between the parties. The stated basis of the charge is that the Employer violated a particular article of its contract with the Union by failing to follow proper layoff and recall rules. Those allegations, read in the light most favorable to Charging Party, appeared to state no more than a breach of contract claim.

On April 17, 2008, and pursuant to Commission Rule 423.165, the Charging Party was ordered to show cause why the charge against the Employer should not be dismissed for failure to state a claim upon which relief can be granted. Lumbreras was expressly cautioned that a failure to respond to the order would result in dismissal of the charge without further proceedings.

Discussion and Conclusions of Law:

Where a charge fails to state a claim under the Act, it is subject to dismissal pursuant to an order to show cause issued under R423.165. The failure, as here, to respond to such an order may, in itself, warrant dismissal. *Detroit Federation of Teachers*, 21 MPER 3 (2008). Regardless, PERA does not regulate all aspects of the employment relationship. The allegations in the present charge, read in the light most favorable to Charging Party, state no more than a breach of contract claim. The Commission has the authority to interpret the terms of a collective bargaining agreement only where necessary to determine whether a party has breached its statutory obligations. *University of Michigan*, 1971 MERC Lab Op 994, 996. However, in the ordinary course, where the terms and conditions of employment are covered by a collective bargaining agreement, the parties are left to pursue contract remedies. *Port Huron Ed Ass'n v Port Huron Area Sch Dist*, 452 Mich. 309, 317-321 (1996); *St Clair Co Road Comm*, 1992 MERC Lab Op 533.

Here the charge asserts only a breach of contract and the charge, therefore, fails to state a claim upon which relief can be granted against the Employer under PERA and for that reason, and based upon the failure to respond to the order to show cause, the charge is subject to dismissal.

RECOMMENDED ORDER

The unfair labor practice charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Doyle O'Connor
Administrative Law Judge
State Office of Administrative Hearings and Rules

Dated: _____