

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

In the Matter of:

BUCHANAN COMMUNITY SCHOOLS,  
Public Employer-Respondent,

Case No. C09 A-015

-and-

BUCHANAN COMMUNITY SCHOOLS TRANSPORTATION  
ASSOCIATION, MEA-NEA,  
Labor Organization-Charging Party.

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**APPEARANCES:**

White, Schneider, Young & Chiodini, P.C., by Jeffrey S. Donahue, Esq., for the Charging Party

**DECISION AND ORDER**

On February 12, 2009, Administrative Law Judge Doyle O'Connor issued his 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. On March 10, 2009, the Commission received a letter from Charging Party asking to withdraw the charge and requesting that the Decision and Recommended Order of the Administrative Law Judge be vacated.<sup>1</sup> Charging Party's request to withdraw the charge is hereby approved and the charge is dismissed with prejudice. This Decision and Order and the Decision and Recommended Order of the Administrative Law Judge will be published in accordance with Commission policy.

MICHIGAN EMPLOYMENT RELATIONS  
COMMISSION

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Christine A. Derdarian, Commission Chair

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<sup>1</sup> The parties have resolved their differences in bargaining.

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Eugene Lumberg, Commission Member

Dated: \_\_\_\_\_

COMMISSIONER GREEN, CONCURRING IN PART, DISSENTING IN PART:

I concur with the majority's decision to grant leave to withdraw the charge. However, I would also vacate the ALJ's Decision and Recommended Order and withhold it from publication.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Nino E. Green, Commission Member

Dated: \_\_\_\_\_

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

In the Matter of:

BUCHANAN COMMUNITY SCHOOLS,  
Public Employer-Respondent,

Case No. C09 A-015

-and-

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ASSOCIATION, MEA-NEA,  
Labor Organization-Charging Party.

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Appearances:

Jeffrey S. Donahue, for the Labor Organization-Charging Party

**DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW**  
**JUDGE ON SUMMARY DISPOSITION**

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, of the State Office of Administrative Hearings and Rules (SOAHR), acting on behalf of the Michigan Employment Relations Commission (MERC).

**The Unfair Labor Practice Charge, Order to Show Cause, and Findings of Fact:**

A charge has been filed with the Commission by the Union, alleging that the Buchanan Community Schools (the Employer) violated the Act by failing to provide information requested by the Buchanan Community Schools Transportation Association (the Union) regarding an escrow account related to the payment of insurance premiums for employees represented by the Union.

Pursuant to Rule 165, R 423.165, of the General Rules and Regulations of the Employment Relations Commission, an order to show cause was issued. The order noted that Commission Rule 423.165 allows for a pre-hearing dismissal of a charge, or for a ruling in favor of the charging party, and that upon review of the charge, it appeared that an order to show cause why an evidentiary hearing was necessary might aid in resolving this dispute without the expense or delay that would be entailed in hearing the matter. The show cause noted that, as asserted in the charge, the information requested was presumptively relevant. The Respondent was granted ten (10) days from the date of the order to respond. Copies of the order were served both on the Respondent, to the attention of business manager Rick Bell, and on the attorney who had earlier

corresponded with the Union regarding the dispute. Respondent was cautioned that a failure to file a timely response to the order would result in a substantive decision on the charge without a hearing.

The Employer was specifically directed to address the following factual issues, in accord with Commission rules and case law:

1. Did the Union make a request for information or documents relating to an escrow account regarding conditions of employment of bargaining unit employees?
  - a. If yes, were any documents in the Employer's possession that contained some or all of the requested information?
  - b. If yes, were the documents or the information provided, or did the Employer otherwise respond to the request?
  - c. If the documents or information existed and were not provided to the Union, why were the documents not provided under the provisions of PERA?
2. What material facts, if any, are in dispute such that summary disposition finding a violation of the Act should not be granted, as requested by the Charging Party?

The order to show cause was served upon the Respondent by certified return-receipt mail, together with the charge, complaint, and notice of hearing. A return card was received by the Commission, establishing receipt of the charge and the order at Respondent's headquarters. The charge, complaint, notice of hearing and order to show cause were also sent by regular mail to Respondent's counsel. The Employer did not file any response to the order to show cause, nor has the Employer sought additional time in which to respond.

#### Discussion and Conclusions of Law:

It is well-established that in order to satisfy its bargaining obligation under Section 10(1)(e) of PERA, an employer must supply in a timely manner requested information that will permit the union to engage in collective bargaining and to police the administration of the contract. *Wayne County*, 1997 MERC Lab Op 679; *Ecorse Public Schools*, 1995 MERC Lab Op 384, 387. Where the information sought relates to discipline or to the wages, hours or working conditions of bargaining unit employees, the information is presumptively relevant and will be ordered disclosed unless the employer rebuts the presumption. *City of Detroit, Department of Transportation*, 1998 MERC Lab Op 205; *Wayne County*, *supra*. See also *E.I. DuPont de Nemours & Co v NLRB*, 744 F2d 536, 538; 117 LRRM 2497 (CA 6, 1984). The standard applied is a liberal discovery-type standard. The employer has a duty to disclose the requested information as long as there exists a reasonable probability that the information will be of use to the union in carrying out its statutory duties. *Wayne County*, *supra*; *SMART*, 1993 MERC Lab Op 355, 357. See also *Pfizer, Inc*, 268 NLRB 916; 115 LRRM 1105 (1984), enforced 763 F2d 887 (CA 7, 1985).

Here the charge asserts that the Employer failed to provide presumptively relevant information requested by the Union. A show cause order was issued which noted that the information sought was presumptively relevant. The Employer has chosen to ignore that order to show cause, which was properly issued in this case pursuant to the Commission's rules. In these circumstances, a proper charge has been stated and there is no genuine issue of material fact in dispute. Under Commission Rule R 423.165 (1), where there is a properly stated charge and no genuine issue of material fact, an administrative law judge acting for the Commission has the authority and obligation to issue a ruling in favor of the charging party on summary disposition. See, *Detroit Public Schools*, \_\_\_MPER\_\_\_ (MERC Case No. C07 B-035, Feb. 2, 2009). In accord with this conclusion and the findings of fact and discussion above, I recommend that the Commission issue the following order.

### RECOMMENDED ORDER

Buchanan Community Schools, its officers, agents, and representatives are hereby ordered to:

1. Cease and desist from
  - a. Refusing to bargain collectively with the representatives of its public employees.
  - b. Failing to provide presumptively relevant information requested by the Buchanan Community Schools Transportation Association.
2. Immediately and without any further delay, provide to the Buchanan Community Schools Transportation Association information which it requests, or has requested, which is relevant to the Union carrying out its duty to represent members or relevant to the policing or administration of the collective bargaining agreement, including specifically all data, documents, and information requested by the Association related to the insurance premium escrow account, where such data, documents, or information is in the possession of or under the control of any employee or agent of the Buchanan Community Schools.
3. Post the attached notice to employees in a conspicuous place for a period of thirty (30) consecutive days.
4. Provide copies of the attached notice to any newspaper(s) of general circulation published or distributed in the Buchanan Community Schools District.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: \_\_\_\_\_

**NOTICE TO ALL EMPLOYEES**

Pursuant to a formal charge before the Michigan Employment Relations Commission, BUCHANAN COMMUNITY SCHOOLS, a public employer under the PUBLIC EMPLOYMENT RELATIONS ACT (PERA), has been found to have committed unfair labor practices in violation of this Act. Pursuant to the terms of the Commission's order, we hereby notify our employees that:

**WE WILL NOT**

- a. Refuse to bargain collectively with the representatives of our public employees.
- b. Fail to timely provide presumptively relevant data, documents, or information requested by the Buchanan Community Schools Transportation Association.

**WE WILL**

- a. Bargain collectively with the representatives of our public employees.
- b. In a timely fashion, provide presumptively relevant information requested by the Buchanan Community Schools Transportation Association.
- c. Without further delay, provide to the Buchanan Community Schools Transportation Association information which it requests, or has requested, which is relevant to the Union carrying out its duty to represent members or relevant to the policing or administration of the collective bargaining agreement, including specifically all data, documents, and information requested by the Association related to the insurance premium escrow account, where such data, documents, or information is in the possession of or under the control of any employee or agent of the Buchanan Community Schools.

**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.

**BUCHANAN COMMUNITY SCHOOLS**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

This notice must be posted for thirty (30) consecutive days and must not be altered, defaced or covered by any 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 Building, 3026 W. Grand Blvd, Suite 2-750, Detroit, MI 48202-2988. Telephone: (313) 456-3510.