

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

In the Matter of:

BURT TOWNSHIP SCHOOL DISTRICT,  
Public Employer-Respondent,

Case No. C09 K-232

-and-

BRENT HAMMER,  
An Individual-Charging Party.

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APPEARANCES:

Thrun Law Firm, P.C., by Robert G. Huber, Esq., for the Public Employer

Brent Hammer, *In Propria Persona*

**DECISION AND ORDER**

On March 31, 2010, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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Christine A. Dardarian, Commission Chair

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Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

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

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

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**APPEARANCES:**

Thrun Law Firm, P.C., by Robert G. Huber, Esq., for Respondent

Brent Hammer, appearing for himself

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

On November 25, 2009, Brent Hammer, a teacher laid off by the Burt Township School District in June 2009, filed the above charge against his employer alleging that it violated Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charge was assigned to Administrative Law Judge Julia C. Stern of the State Office of Administrative Hearings and Rules.

On February 22, 2010, Respondent filed a motion for summary disposition under Rules 165 (2) (b) (d) and (f) of the Commission's General Rules, 2002 AACRS, R 423.165, asserting that Hammer has failed to state a claim upon which relief can be granted under PERA and that there are no material facts in dispute and that the charge should be dismissed as a matter of law. Respondent attached to its motion a previous unfair labor practice charge (Case No. C09 F-090) filed by Hammer on behalf of the Burt Township Education Association (the Union) on June 16, 2009 and withdrawn on July 10, 2009. This charge alleged that Respondent violated its duty to bargain in good faith by violating a number of provisions of the collective bargaining agreement. Some of these allegations are repeated in the instant charge. The instant charge, however, includes additional allegations, including an allegation that Respondent terminated employees in retaliation for the exercise of their rights under PERA.

Hammer was given until the close of business on March 15, 2010 to file a response to the motion. He did not file a response. Based on the facts set forth in Hammer's charge, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

The first paragraph of Hammer's charge reads as follows:

Burt Township Board of Education failed to bargain or otherwise refused to bargain over its unilateral decision to terminate employees. Burt Township Board of Education failed to follow the terms of the collective bargaining agreement it had entered into. The Burt Township Board of Education terminated employees who had exercised their protected right to form a labor organization and the action taken was in retaliation for the exercise of rights under PERA. The Burt Township Board of Education has acted in bad faith.

In the remainder of his charge and in attachments, Hammer alleges that on May 29, 2009, Respondent voted to terminate employees of the Burt Township Education Association (the Union), including Hammer, in violation of the collective bargaining agreement and without bargaining in good faith. He asserts that Respondent violated Section 7C of the collective bargaining agreement when the Board failed to undertake an annual review of staffing needs before accepting the administration's recommendations for staffing reductions, and Section 8B of the collective bargaining agreement by failing to confer with the Union on methods to be utilized to effect the staff reduction before announcing the layoffs. Hammer asserts that in August 2009, Respondent violated the recall provisions of the collective bargaining agreement when it rehired a laid off teacher with less seniority than Hammer to fill a position titled professional tutor. Hammer's charge also details other alleged violations of the collective bargaining agreement occurring prior to May 29, 2009.

Facts:

The pertinent facts, as alleged in the charge, are as follows. On July 9, 2007, the Union was certified as the collective bargaining representative for a unit of Respondent's teachers. Hammer was employed by Respondent at that time, although he had not yet acquired tenure. Respondent and the Union entered into a one year collective bargaining agreement covering the term September 1, 2008 to August 31, 2009. Hammer does not assert that he was active in the Union's organizing efforts or that he held a position with the Union prior to his layoff. However, as noted above, in June 2009 Hammer filed an unfair labor practice charge on behalf of the Union which was later withdrawn.

On May 29, 2009, Respondent's Board adopted the recommendation of Respondent's superintendent to reduce the number of staff. According to the Board minutes, the staff reductions were due to a drop in student enrollment and because the reductions saved money. Hammer was among the teachers selected for layoff. Hammer addressed the Board at this meeting, or at another Board meeting held the same day. In his address, Hammer accused the Board of violating a number of contract provisions, "the protected rights of the staff under PERA," and the rights of the Union by making a unilateral decision to terminate staff members without bargaining the impact of this decision.

## Discussion and Conclusions of Law:

Section 9 of PERA states:

It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

Section 10(1)(a) of PERA makes it unlawful for a public employer or its agent to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in Section 9. However, an individual does not state a cause of action under PERA merely by alleging that the employer violated the collective bargaining agreement. *City of Detroit (Wastewater Treatment Plant)*, 1993 MERC Lab Op 793, 794; *Wayne Co Cmty College*, 1985 MERC Lab Op 930, 936. See also *City of Pontiac*, 20 MPER 25 (2007 (no exceptions)); *Mt Clemens Cmty Sch Dist*, 18 MPER 36 (no exceptions); *Wayne Co Airport Dept*, 2002 MERC Lab Op 241 (no exceptions); *Utica Cmty Schs*, 2000 MERC Lab Op 268 (no exceptions); *City of Monroe*, 1994 MERC Lab Op 638 (no exceptions). I find that Hammer's allegations that Respondent violated various terms of the contract between it and the Union do not state a claim upon which relief can be granted under Section 10(1) (a) of PERA.

Section 10(1)(c) of PERA makes it unlawful for a public employer or its agent to discriminate in regard to hire, terms or other conditions or employment in order to encourage or discourage membership in a labor organization. An employer who retaliates against employees because they have joined or formed a labor organization violates Section 10(1) (c). Hammer's charge alleges that on May 29, 2009 Respondent terminated employees, including Hammer himself, because they had exercised their rights under PERA, including their right to form a union. However, as Respondent points out in its motion for summary disposition, Hammer does not assert any facts suggesting a nexus between the terminations in 2009 and the formation of the union two years earlier. The charge also does not allege that Respondent's motive for terminating employees was to retaliate against them for the exercise of other Section 9 rights. For example, Hammer does not assert that employees were terminated because they filed grievances or because the Union took a position adverse to the Respondent in collective bargaining. He also does not allege that he or the other employees who were terminated were singled out because of their union or other protected activities either before or after the Union was certified. Hammer was given the opportunity to address Respondent's motion and the factual deficiencies of his charge, but failed to do so. I find that Hammer has failed to state a factually supported claim upon which relief can be granted under Section 10(1) (c) of PERA.

Section 10(1) (e) of PERA makes it unlawful for a public employer to refuse to bargain collectively with the representatives of its employees. An employer's breach of a collective bargaining agreement does not violate its duty to bargain in good faith under this section unless it qualifies as a "repudiation" or mid-term modification of the agreement. It is well established, however, that because the duty to bargain runs between the employer and the labor organization, an individual has no standing to assert a violation of Section 10(1) (e) where his or her employer

and union agree that no statutory obligation was breached. *Detroit Pub Schs*, 1985 MERC Lab Op 789; 791, and cases cited therein at 791. See also *City of Pontiac, supra* (no exceptions); *Wayne Co (Community Mental Health Agency)*, 21 MPER 73 (2008) (no exceptions). Accordingly, I find that Hammer has no standing to assert the claims of the Union that the Respondent violated its duty to bargain in good faith.

For the reasons outlined above, I conclude that Hammer's charge does not state a claim under which relief can be granted under PERA. I recommend, therefore, that Respondent's motion for summary dismissal be granted and that the Commission issue the following order.

**RECOMMENDED ORDER**

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern  
Administrative Law Judge  
State Office of Administrative Hearings and Rules

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