

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

In the Matter of:

TAYLOR SCHOOL DISTRICT,
Public Employer - Respondent,

Case No. C07 I-218

-and-

TAYLOR FEDERATION OF TEACHERS, AFT, AFL-CIO,
Labor Organization - Charging Party.

APPEARANCES:

Dickinson Wright, P.L.L.C., by George P. Butler, III, Esq., for the Public Employer

Mark H. Cousens, Esq., for the Labor Organization

DECISION AND ORDER

On November 20, 2008, Administrative Law Judge Doyle O'Connor 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

Christine A. Derdarian, 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:

TAYLOR PUBLIC SCHOOLS,
Respondent-Public Employer,

-and-

Case No. C07 I-218

TAYLOR FEDERATION OF TEACHERS, AFT, AFL-CIO,
Charging Party-Labor Organization.

APPEARANCES:

George Butler, for the Respondent

Mark Cousens, for the 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 heard at Detroit, Michigan on November 17, 2008, before 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 (MERC). Based upon the entire record, including the pleadings and the Union's motion for summary disposition made on the day of trial, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge:

On September 21, 2007, the Taylor Federation of Teachers, AFT Michigan, AFT, AFL-CIO (Union) filed the charge in this matter, which asserts that Taylor Public Schools (Employer) violated the Act in 2007 by failing to bargain in good faith regarding the terms of a successor collective bargaining agreement. The Union amended the Charge on August 28, 2008, to add the allegation that the Employer violated the Act in August of 2008 by failing to execute, and by repudiating, a mutually ratified collective bargaining agreement. The Employer filed an answer to the Charge in which it denied any wrongful conduct.

The Employer filed multiple pre-trial motions, each of which was resolved, or was withdrawn, on or before the day scheduled for trial.¹ At trial, the Union moved for summary disposition under Commission Rule R 423.165 (2)(f), asserting that there was no genuine dispute of material fact and that it was entitled to judgment in its favor as a matter of law. The Union made an offer of proof in support of that motion in which it asserted that it would present testimony establishing that: 1) the individuals the Employer sent to the bargaining table in 2007 lacked actual authority to negotiate with the Union, and that as a direct consequence, a tentative agreement reached between the Union and the Employer's representatives was rejected by the Employer in August of 2007; 2) the parties resumed negotiations in 2008 and reached a tentative agreement which was ratified by the Union on June 11 & 12, 2008 and ratified by the Employer on June 21, 2008; 3) despite the mutual ratification of the 2008 agreement, the Employer refused to execute or implement the Agreement and repudiated its terms, in part by asserting that an unmet contingency in the contract precluded implementation of the remaining terms of the contract; and 4) employees were denied benefits under the ratified contract as a result of it being repudiated by the Employer.

In response to the Union's motion for summary disposition and offer of proof, the Employer indicated that it did not, and could not, challenge the factual basis for the motion asserted by the Union; acknowledged that as a matter of law the 2008 collective bargaining agreement had been properly ratified by the parties and was binding upon them both; acknowledged that the Employer had failed to execute or implement the terms of the ratified agreement without a lawful basis; acknowledged that there was no material dispute of fact; indicated that it did not oppose the Union's motion for summary disposition; and that it did not oppose the issuance of the Commission's standard remedies.

Findings of Fact

The uncontested facts establish several violations of the Act by Taylor Public Schools. In 2007, representatives of the Union and the Employer met and negotiated a tentative agreement establishing the terms of a successor collective bargaining agreement. That tentative agreement was then rejected by vote of the Employer's Board, as the representatives it sent to the bargaining table had not been given actual authority to negotiate or to reach agreement with the Union on changes in conditions of employment.

In 2008, after the filing of the initial Charge in this matter, the parties renewed negotiations in an effort to agree upon the terms of a successor collective bargaining agreement. A tentative agreement was again reached and was ratified by the Union and then ratified by vote of the Taylor

¹ The Employer filed multiple meritless affirmative defenses. The Employer's two motions to dismiss were denied as meritless by order of October 21, 2008, with the Employer's improperly filed exceptions to that order withdrawn on November 18, 2008. The Employer's motion to take a *de bene esse* deposition was denied by order of November 3, 2008. The Employer's several motions to recuse were denied from the bench on November 17, 2008. The Employer's several motions for stay of proceedings were withdrawn on November 17, 2008. Despite their multiplicity and extraordinary volume, the pleadings filed were each so clearly lacking in both legal and factual substance as to violate the respective minimum requirements of Executive Order 2005-1, MCR 2.114 and MRPC 3.1 and 3.3.

Public Schools Board on June 21, 2008. Notwithstanding that ratification vote, the Employer failed to execute the collective bargaining agreement and refused to implement its terms. While the Employer's Board acted out of asserted confusion between it and its representatives, it now acknowledges that its repudiation of the terms of that final and ratified collective bargaining agreement was unlawful.

Discussion and Conclusions of Law:

The Public Employment Relations Act was passed in recognition of the right of public employees to join together in unions and to then bargain collectively with their employers. The Act anticipates and requires that the parties negotiate with each other in good faith. A part of the obligation to bargain in good faith is the duty to send representatives to the table who in fact have authority to negotiate and reach agreement, albeit with such agreements subject to ratification by a vote of the public body's governing board. The mere failure of a party to ratify a tentative agreement is not a violation of the Act. See, *Eau Claire Schools*, 1973 MERC Lab Op 184. Nonetheless, the Commission anticipates each party sending representatives to the table who not only have authority to negotiate, but who will affirmatively support ratification of any tentative agreement reached. *City of Springfield*, 1999 MERC Lab Op 399.

Once a tentative agreement has been ratified, the parties have satisfied their duty to bargain with each other. A post-ratification insistence on renegotiating the terms of the ratified agreement is unlawful. *Village of Chesaning*, 1974 MERC Lab OP 580; *Command Officers Association of Michigan*, 20 MPER 50 (2007). A failure to execute, or to implement, a ratified agreement violates the Act, even where a party asserts a post-ratification realization of some unanticipated adverse consequence arising from the contractual terms to which it had agreed. *Port Austin Pub Sch*, 1977 MERC Lab Op 974; *Command Officers*, supra.

Under Rule 165 (2)(f), an administrative law judge may issue a ruling in favor of a charging party where there is no material dispute of fact. In accord with the findings of fact and conclusions of law set forth above, I find that in both 2007 and in 2008, Taylor Public Schools violated its duty to bargain in good faith under Section 10(1)(e) and I, therefore, recommend that the Commission issue the following order.

RECOMMENDED ORDER

Taylor Public Schools, its officers, agents, and representatives shall:

1. Cease and desist from
 - a. Failing to give actual authority to its representatives to in fact engage in good faith negotiations with the Union;
 - b. Failing to timely execute and fully implement the collective bargaining agreement with the Union which the Employer ratified on or about June 21, 2008;
 - c. Repudiating the terms of the collective bargaining agreement with the Union that the Employer ratified on or about June 21, 2008.

2. Take the following affirmative action necessary to effectuate the purposes of the Act
 - a. Bargain in good faith with the Taylor Federation of Teachers;
 - b. Immediately execute and implement the collective bargaining agreement with the Union that the Employer ratified on or about June 21, 2008;
 - c. Make whole any individual employees, or former employees, who suffered any loss of benefit or privilege as a result of the Employer's failure to timely execute and implement the collective bargaining agreement, or by the Employer's repudiation of that collective bargaining agreement.
3. Post the attached notice to employees in a conspicuous place in each workplace for a period of thirty (30) consecutive days, including by prominently posting the notice for a period of thirty (30) consecutive days on any Taylor Public Schools website to which employees regularly have access as a part of their employment.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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

Dated: _____

NOTICE TO ALL EMPLOYEES

After a public hearing before the Michigan Employment Relations Commission, TAYLOR PUBLIC 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. Send to the bargaining table representatives who lack actual authority to bargain in good faith with the Union;
- b. Fail to timely execute and fully implement the collective bargaining agreement with the Union that the Employer ratified on or about June 21, 2008;
- c. Repudiate the terms of the collective bargaining agreement with the Union that the Employer ratified on or about June 21, 2008.

WE WILL

- a. Bargain in good faith with the Taylor Federation of Teachers;
- b. Give actual authority to our representatives to in fact engage in good faith negotiations with the Union;
- c. Immediately execute and fully implement the collective bargaining agreement with the Union that the Employer ratified on or about June 21, 2008;
- d. Make whole any individual employees, or former employees, who suffered any loss of benefit or privilege as a result of our failure to timely execute and implement the collective bargaining agreement, or by our repudiation of that collective bargaining agreement.

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.

TAYLOR PUBLIC 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.