

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

In the Matter of:

BUCHANAN COMMUNITY SCHOOLS,  
Public Employer-Respondent,

Case No. C09 A-013

-and-

BUCHANAN 5-C EDUCATION 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. Dardarian, Commission Chair

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Eugene Lumberg, Commission Member

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

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

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-013

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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 was filed with the Commission by the Buchanan 5-C Education Association, MEA-NEA (the Union), alleging that the Buchanan Community Schools (the Employer) violated the Act by refusing to participate in mediation with a mediator assigned by the Commission.

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 order noted that, as asserted in the charge, an employer must participate in the statutory mediation process as administered by the Commission. 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 Buchanan Community Schools 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. Have the parties been engaged in negotiations over a successor collective bargaining agreement?
2. Did one of the parties request mediation of the dispute?
3. Did the Commission assign a mediator and notify the parties of that assignment?
4. Did the assigned mediator attempt to schedule dates for one or more mediation sessions?
5. Has the Employer refused to participate in mediation of the dispute over the terms of the successor collective bargaining agreement?

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 participate in the statutory mediation process as administered by the Commission. See, *Orion Township (Dept of Public Works) -and- Teamsters Local 214*, 18 MPER 72 (2005), where the Commission held:

We have consistently stated the importance of mediation and fact-finding, indicating that the failure of the parties to utilize these services to the maximum extent necessary may be viewed as indicating a lack of good faith, and contrary to the intent and policies of PERA. *Crestwood Sch Dist*, 1975 MERC Lab Op 609; *Cass Co Road Comm*, 1984 MERC Lab Op 306.

Here the charge asserts that the Employer refused to take part in mediation requested by the Union and directed by the Commission. A show cause order was issued which noted that participation in mediation was a part of the statutory obligation to engage in good faith bargaining. 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 these conclusions 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 take part, in good faith, in mediation as directed by the Commission and its staff.
2. Bargain in good faith with the Buchanan 5-C Education Association, MEA-NEA.
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. Refuse to participate in mediation with the Buchanan 5-C Education Association, MEA-NEA.

**WE WILL**

- a. Bargain collectively with the representatives of our public employees.
- b. Cooperate immediately in the scheduling of mediation with the Buchanan 5-C Education Association, MEA-NEA.
- c. In the future, comply fully with our obligation to bargain in good faith with the Buchanan 5-C Education Association, MEA-NEA.

**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.