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

In the Matter of:

MUSKEGON PUBLIC SCHOOLS,
Public Employer-Respondent in Case No. C14 G-084/Docket No. 14-017943-MERC,

-and-

MUSKEGON EDUCATION ASSOCIATION,
Labor Organization-Respondent in Case No. CU14 G-036/Docket No. 14-017944-MERC,

-and-

NORMA T. KOEHLER,
An Individual-Charging Party.
_____/

APPEARANCES:

Britton & Bossenbroek PLC, by Gary T. Britton, for the Respondent Public Employer

Kalniz, Iorio & Feldstein Co, LPA, by Kurt Kline, for the Respondent Labor Organization

Norma T. Koehler, appearing on her own behalf

## DECISION AND ORDER

On October 22, 2014, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondents 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

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: November 26, 2014

**STATE OF MICHIGAN**
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**
**EMPLOYMENT RELATIONS COMMISSION**

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APPEARANCES:

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Kalniz, Iorio & Feldstein Co, LPA, by Kurt Kline, for the Respondent Labor Organization

Norma T. Koehler, appearing for herself

## DECISION AND RECOMMENDED ORDER ON SUMMARY DISPOSITION

On July 16, 2014, Norma T. Koehler filed the above charges with the Michigan Employment Relations Commission (the Commission) against her employer, the Muskegon Public Schools (the Employer) and her collective bargaining representative, the Muskegon Education Association (the Union) alleging that the Respondent violated §10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. Pursuant to Section 16 of PERA, the charges were assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System. Based on facts alleged by Koehler in her charges and in position statements filed by the Respondents and not in dispute, I make the following conclusion of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charges:

According to the proof of service she filed, Koehler's charges were mailed to Respondents on July 9, 2014, and the charges were received by the Commission on July 16,

2014. The charge against the Employer alleges that it violated PERA by laying her off, effective July 1, 2014, in violation of the collective bargaining agreement. The charge against the Union alleges that it breached its duty of fair representation by failing to advocate on her behalf to get her off the layoff list.

On August 6, 2014, I scheduled a hearing on Koehler's charges and also directed both Respondents to file position statements in response to Koehler's allegations. The Employer filed its position statement on August 27, 2014, and the Union filed its position statement on September 3, 2014.

Facts:

Koehler has been employed by the Employer as a clerk since 1996 and is a member of a bargaining unit represented by the Employer. Throughout the 2013-2014 school year, Koehler was on an approved medical leave. Sometime during this school year, Respondent decided to subcontract its transportation services to a private company, and Koehler's position as transportation clerk was eliminated. Koehler was still on approved medical leave in June 2014, when she was notified that she needed to attend a meeting on June 11, 2014 during which bargaining unit members would exercise their bumping rights for positions for the upcoming school year.

At the June 11 meeting, Koehler attempted to bump into several positions within her job classification in accord with her seniority, but was told that she was not eligible for these positions because she had not passed the skills tests required for these positions. According to Koehler, these were new requirements that had been implemented during her medical leave, and she had not been aware of them. The Employer asserts that many positions in the bargaining unit require skills tests, and that employees are regularly advised to take these tests so that they will be eligible to bump; it is not clear whether it disagrees with Koehler that the skills test requirements for these specific positions were newly implemented. At the end of the June 11 meeting, Koehler's name was placed on a list of employees to be laid off along with the names of the other employees who had not bumped into new positions. According to Koehler, she argued during the meeting that under the collective bargaining agreement she did not have to exercise her bumping rights until after she returned from medical leave. The Employer disputes this; it maintains that Koehler merely insisted that she had the right to bump into the other positions. It also asserts that Koehler's behavior at the meeting was obstreperous and disruptive.

On June 16, 2014, the Employer notified Koehler that she was being laid off effective June 30, 2014. In its position statement, the Employer states that it concluded at the time that this action was appropriate because the statement on file from Koehler's physician indicated that Koehler would be returning to work in July 2014. Koehler was told that her benefit coverage, except her medical insurance, would terminate on June 30, 2014, but that she would continue to receive medical benefits as well as disability payments until she was cleared by her physician to return to work. According to Koehler, however, these medical benefits were not the same as those she had been receiving as an employee on medical leave. The Employer also sent Koehler forms to apply for unemployment.

After she received her layoff notice, Koehler talked to Union UniServ Representative Tim Smith about her situation. Their conversation is reflected in a series of emails supplied to me by the parties. Smith told Koehler that the Local Union president said that under the contract she should have the opportunity to take the necessary skills tests after she was released from medical leave. Koehler asked Smith to see that she wasn't laid off. Smith then spoke to Employer Superintendent Betty Savage about Koehler. On June 25, 2014, Smith sent Koehler an email stating that he had spoken to Savage and that Savage agreed that Koehler was still on medical leave. Smith asked Koehler to send him verification that she had in fact been laid off. Smith also said that he had told Savage that Koehler had the right to take the skills tests after she was released from medical leave, that Savage questioned this, but said that she would get back with him on this issue.

On July 14, 2014, the Employer sent Koehler a letter stating that her layoff notice was rescinded immediately, and that the Employer recognized that she should not have received a layoff notice as she was on an approved medical leave. The Union attached a copy of the Employer's July 14, 2014 letter to the position statement it filed on September 3, 2014.

On September 5, 2014, I sent Koehler a letter stating that, from the July 14, 2014 letter, it appeared that the dispute giving rise to the charge had been resolved in her favor. I asked Koehler to provide an explanation in writing if this was not the case, and I adjourned the hearing. The letter stated that if Koehler did not respond, I would recommend that her charges be dismissed as moot. Koehler did not respond to my September 5 letter.

Discussion and Conclusions of Law:

An issue is moot if a judgment on an issue cannot have a practical legal effect on an existing controversy. *People v Richmond*, 486 Mich 29, 34-35; (2010); *Detroit Pub Schs,* 25 MPER 58 (2012); *City of Flint*, 25 MPER 12 (2012). In this case, Koehler received the relief that she requested in her charge, the rescission of her June 25, 2014 layoff notice, on the same day she filed her charge. It is not clear whether the Employer has agreed to allow Koehler to take the skills tests she needs to exercise her bumping rights after she returns from her medical leave, but Koehler has not alleged that the Employer has violated either PERA or the contract by refusing to allow her to take these tests. I conclude, therefore, that the charges should be dismissed as moot, and I recommend that the Commission issue the following order.

## RECOMMENDED ORDER

The charges are dismissed in their entireties.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: October 22, 2014